FOREIGN INVESTMENT REVIEW ACT OF 1974

HEARING

BEFORE THE

SUBCOMMITTEE ON FOREIGN COMMERCE AND TOURISM

OF THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

NINETY-THIRD CONGRESS

SECOND SESSION

ON

S. 3955

TO ESTABLISH WITHIN THE DEPARTMENT OF COMMERCE A FOREIGN INVESTMENT REVIEW ADMINISTRATION TO CONDUCT A CONTINUING REVIEW AND ANALYSIS OF FOREIGN INVESTMENT IN THE UNITED STATES, TO REQUIRE REPORTS AND INFORMATION FROM FOREIGN INVESTORS IN THE UNITED STATES, TO PUBLISH REPORTS WITH RESPECT TO SUCH INVESTMENT, AND FOR OTHER PURPOSES

SEPTEMBER 18, 1974

Serial No. 93-113

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE
43-474 WASHINGTON : 1974

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FOREIGN INVESTMENT REVIEW ACT OF 1974

WEDNESDAY, SEPTEMBER 18, 1974

U.S. SENATE,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON FOREIGN COMMERCE AND TOURISM,
Washington, D.C.

The subcommittee met at 10 a.m. in room 6202, Dirksen Senate Office Building, Hon. Daniel K. Inouye (chairman of the subcommittee) presiding.

OPENING STATEMENT BY SENATOR INOUYE

Senator INOUYE. This morning the Subcommittee on Foreign Commerce and Tourism will commence hearings on S. 3955, the Foreign Investment Review Act of 1974. This bill was introduced on August 22 by Senator Howard Metzenbaum of Ohio and eight other cosponsors. Since that time 22 additional Senators have joined the distinguished Senator from Ohio.

The legislation under consideration today would establish within the Department of Commerce a foreign investment review administration to conduct a continuing review and analysis of foreign investment in the United States, to require reports and information from foreign investors in the United States, and to publish reports with respect to such investments.

Support for S. 3955 has been bipartisan and spans a wide spectrum of ideological beliefs. Interest in the bill has been generated by recent developments in international commerce and finance. In 1973 foreigners made direct investments in the United States of approximately $3.5 billion, consisting of net capital inflows, reinvested earnings and valuation adjustments. This represents a vast increase over the $700 million figure in 1972.

Although this dramatic increase in foreign direct investment is significant in itself, it does not fully describe the dimensions of the economic upheavals which have occurred within the past year. As a result of the oil price increase, the petroleum producing countries will enjoy an unprecedented rise in their incomes. The World Bank recently estimated that these nations may have a surplus of approximately $60 billion in 1974 alone.

The existence of vast monetary reserves means that certain nations will wield a disproportionate amount of political-economic leverage in world affairs. This profound shift in economic influence could also foreshadow a great change in political power.

Staff member assigned to this hearing Eric H. M. Lee.

Several months ago in response to the phenomenon of increased foreign direct investment in the United States, I introduced S. 2840, the Foreign Investment Study Act, a bill to authorize a comprehensive survey of foreign direct and portfolio investment in the United States. I am pleased to note that the bill has been passed by the Senate and by the House and that the differences between the two versions will be resolved shortly.

In drafting that bill, I was careful to avoid any impression that I was interested in restrictions on foreign investment in the United States. It is, and has been, official American policy that foreign investors shall be granted national treatment, that is, they shall be free to invest in the United States with the exception of a few industries, which most countries reserve for national investment and control. I agree with the views expressed by the Executive that we should not reverse our commitment to a free and open world economy without firm evidence that foreign investment is having a detrimental effect on our economy and/or national security. Foreign investment, particularly in the form of new equity, can have a beneficial economic impact by creating more jobs, enlarging the tax base, and providing for the transfer of new skills and technology, but by the same token foreign investment can also have adverse economic effects.

Hearings on S. 2840 and other hearings on this subject have revealed that there is a serious deficiency in our knowledge about the effects of foreign investment on our domestic economy. The last benchmark survey on foreign direct investment was conducted in 1959 and on foreign portfolio investment in 1949. The data in those studies is clearly outmoded and in great need of updating.

The bill being considered today is not intended to be restrictive since, as I noted earlier, foreign investment can bring substantial economic benefits. Nor is it intended to be discriminatory, even though the oil producing nations will have the bulk of the excess reserves, since the increased direct investment about which we are concerned began prior to this latest shift in capital movements. Rather, the bill is designed to provide a continuous flow of vital information to policymakers in the Congress and the executive about the identity of the investors and the effects of foreign investment on the domestic economy.

[The bill and agency comments follow:]

93D CONGRESS
2D SESSION

S. 3955

IN THE SENATE OF THE UNITED STATES

AUGUST 22, 1974

Mr. METZENBAUM (for himself, Mr. ALLEN, Mr. CRANSTON, Mr. HUDDLESTON, Mr. HUMPHREY, Mr. INOUYE, Mr. METCALF, Mr. NUNN, and Mr. STEVENS) introduced the following bill; which was read twice and referred to the Committee on Commerce

A BILL

To establish within the Department of Commerce a Foreign Investment Review Administration to conduct a continuing review and analysis of foreign investment in the United States, to require reports and information from foreign investors in the United States, to publish reports with respect to such investment, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Foreign Investment Review Act of 1974".

DEFINITIONS

SEC. 2. As used in this Act—

(1) The term "foreign investment" means the ownership or control, by stock ownership or otherwise, by any foreign investor, of all or part of a business concern or property which is located wholly or substantially in the United States or which is owned or controlled wholly or substantially by individuals who are residents of the United States or by any person owned or controlled by such individuals.

(2) The term "foreign investor" means a foreign government or any agency thereof, an international agency or other organization, as defined by the Secretary, an individual who is not a resident of the United States, and any person who, directly or indirectly, is owned or controlled by, or acting as an agent or trustee for, one or more such governments, agencies, organizations, or individuals.

(3) The term "business concern" means any corporation, partnership, trust, joint venture, or other association or entity, and such term includes newly established as well as ongoing concerns.

(4) The term "property" means any real or personal property and any other thing of value, including

the right to acquire or control any real or personal property.

(5) The term "Secretary" means the Secretary of Commerce.

FOREIGN INVESTMENT REVIEW

SEC. 3. (a) (1) The Secretary of Commerce shall, by regulation, order, or otherwise, establish and maintain procedures which require the maintenance of records and the submission of reports by foreign investors and by such other persons as the Secretary determines to be appropriate with respect to—

(A) any acquisition, after the date of enactment of this Act, of an interest in a business concern whose stock is publicly traded on a national securities exchange or otherwise in the United States, if after such acquisition—

(i) any single foreign investor owns or controls, directly or indirectly, 5 per centum or more of such business concern, or

(ii) two or more foreign investors from the same foreign country own or control, directly or indirectly, 10 per centum or more of such business concern;

(B) any acquisition, after the date of enactment of

this Act, of an interest in a business concern whose stock is not publicly traded on a national securities exchange or otherwise in the United States, if after such acquisition—

(i) 25 per centum or more of such business concern is owned or controlled, directly or indirectly, by one or more foreign investors, and

(ii) at the time of such acquisition the assets of such business concern have a value of $3,000,000 or more; and

(C) any acquisition, after the date of enactment of this Act, of an interest by a foreign investor in property which is located in the United States and which the Secretary by regulation, on the basis of objective economic and other criteria, determines shall be subject to the recordkeeping and reporting requirements imposed under this section.

(2) The records and reports required under this section shall include—

(A) the name or names of the foreign investors involved;

(B) the nationality or citizenship and place of residence of any individual foreign investors involved;

(C) the country or countries with which any agency

or other organization which is a foreign investor is affiliated;

(D) the extent of the ownership or control which is exercisable by such foreign investor; and

(E) such other information as the Secretary may require.

(3) Any report required under this section with respect to an acquisition shall be submitted not later than ten days following the date of the acquisition.

(b) Notwithstanding any other provision of law, the Secretary shall compile and publish all reports received by him under subsection (a) at least monthly, and all such reports shall be available and shall remain available for public inspection and copying.

(c) The Secretary shall publish a quarterly summary and analysis of the nature and scope of foreign investment in the United States during the quarter covered by the report. Such quarterly summary and analysis shall also contain the Secretary's assessment of any significant trends in foreign investment in the United States during such quarter.

(d) Not later than one hundred and twenty days after the date of enactment of this Act, the Secretary shall collect and publish with respect to each business concern described in

paragraph (1) (A) or (B) the following information as of the date of enactment of this Act:

(1) The name of each foreign investor who has an interest in such business concern, and the nature and extent of such interest.

(2) The nationality or citizenship and place of residence of each such investor who is an individual.

(3) The country or countries with which any agency or other organization which is a foreign investor is affiliated.

ACQUISITION OF INFORMATION

SEC. 4. (a) For purposes of carrying out the provisions of this Act, the Secretary may, by regulation, order, or otherwise, obtain such information from, require such reports and the keeping of such records by, make such inspections of the books, records and other writings, premises, or property of, and take the sworn testimony of, and administer oaths and affirmations to, such persons as may be necessary or appropriate, including foreign investors and agents of foreign investors.

(b) For purposes of carrying out this Act, the Secretary may request from any department or agency of the United States, and that department or agency shall provide him, any information relating to foreign investment in the United States.

(c) The Secretary, or his duly authorized agent, shall

have authority, for any purpose related to this Act, to sign and issue subpenas for the attendance and testimony of witnesses and the production of relevant books, papers, and other documents, and to administer oaths. Witnesses summoned under the provisions of this section shall be paid the same fees and mileage as are paid to witnesses in the courts of the United States. In case of refusal to obey a subpena served upon any person under the provisions of this section, the Secretary or his delegate, may request the Attorney General to seek the aid of the United States district court for any district in which such person is found to compel that person, after notice, to appear and give testimony, or to appear and produce documents before the agency.

(d) In order to carry out the provisions of this Act, the Secretary is further authorized—

(1) to hold such hearings at such times and places as he determines to be appropriate;

(2) appoint and fix the compensation of such additional personnel as may be necessary; and

(3) procure the temporary or intermittent services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code, at rates to be fixed by the Secretary, but not in excess of the maximum rate payable under such section, plus travel expenses, including per diem in lieu of subsistence,

as authorized by section 5703(b) of title 5, United States Code, for persons in the Government service employed intermittently.

PENALTIES

SEC. 5. (a) Whoever fails to maintain a record or submit a report required under this Act shall be subject to a civil penalty of not more than $5,000 for each failure.

(b) Whoever willfully fails to maintain a record or submit a report required under this Act shall be fined not more than $5,000 for each violation or imprisoned not more than five years for each violation, or both.

(c) In any case in which the Secretary determines that any foreign investor has acquired, directly or indirectly, ownership or control of a business concern or property, that such acquisition is subject to the requirements of section 3, and that such person failed to comply with the provisions of such section, he may, after such notice and opportunity for hearing as he determines to be appropriate, issue an order prohibiting the exercise of any voting rights so acquired. Any such order shall remain in effect until such time as the Secretary finds that such person has complied with such requirements. In carrying out the provisions of this section, the Secretary is authorized (1) to appoint a trustee or receiver of, or make other arrangements with respect to, any securities or other indicia of ownership or control acquired

without the compliance with the reporting requirements of section 3, and (2) if control of the business concern has been obtained without compliance with such requirements, to appoint a trustee or receiver of, or make other arrangements with respect to, the business concern or property.

INJUNCTIONS

SEC. 6. Whenever it appears to the Secretary that any person has failed to comply with the requirements of section 3, he may request the Attorney General to bring an action in the appropriate district court of the United States to compel compliance with such requirements, and upon a proper showing a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. In addition to such injunctive relief, such court may also order the payment of any civil penalty imposed under section 5.

ADMINISTRATIVE PROVISIONS

SEC. 7. (a) There is established in the Department of Commerce a Foreign Investment Review Administration. The Secretary shall carry out the provisions of this Act through the Foreign Investment Review Administration and, with the assistance of an Assistant Secretary of Commerce, in addition to those already provided for, shall supervise and direct the Administrator created herein. The Assistant Secretary authorized by this section shall be appointed

by the President by and with the advice and consent of the Senate and shall be compensated at the rate provided for level IV of the Executive Schedule. Such Assistant Secretary shall perform such functions as the Secretary may prescribe. There shall be appointed by the President, by and with the advice and consent of the Senate, an Administrator for Foreign Investment Review who shall be compensated at the rate provided for level V of the Executive Review Administration and perform such other duties as are assigned by the Secretary.

(b) The Secretary is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this Act.

(c) (1) Section 5315(12) of title 5, United States Code, is amended by striking out "(6)" and inserting in lieu thereof "(7)".

(2) Section 5316 of such title is amended by adding at the end thereof the following:

"(135) Administrator for Foreign Investment Review.".

(d) Section 3502 of title 44, United States Code, is amended by inserting after "independent Federal regulatory agencies" a comma and "the Foreign Investment Review Administration".

AUTHORIZATION

SEC. 8. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

DEPARTMENT OF STATE,
Washington, D.C., September 9, 1974.

Hon. HOWARD M. METZENBAUM,
U.S. Senate,
Washington, D.C.

DEAR SENATOR METZENBAUM: The Secretary has asked me to reply to your letter of August 13, 1974 concerning the prospects for increased foreign investment in the United States, with which you enclosed a copy of one of your speeches in the Senate entitled "International Oil Revenues." As you noted both in your letter and in your remarks on the Senate floor, the concentration of financial wealth among the oil-producing nations poses a challenge of adjustment for all nations, developed and developing alike. We therefore welcome this opportunity to share our views on this subject with you.

The United States Government has traditionally observed an open-door, nondiscriminatory policy with respect to foreign investment in the United States. In general, foreign investors are accorded "national" treatment: they are freely admitted, and once admitted, are treated on the basis of equality with American citizens with respect to investment. The United States Government does not offer foreign investors special incentives to attract them to the United States, nor, with a few internationally-recognized exceptions, has it restricted their access to investment opportunities in this country. In compliance with national statutes and with United States international treaty obligations, alien participation in sectors of the economy relating to the national defense, having a fiduciary character, or involving the exploitation of certain natural resources is regulated or prohibited. The most important sectors affected are coastal and freshwater shipping, domestic air transport, communications, atomic energy, and hydroelectric power. Several of our states impose additional restrictions in banking, insurance and land ownership. These state restrictions, nonetheless, must be consistent with our treaty commitments and Federal law.

This policy, essentially one of neutrality, was and is founded upon the belief that the operation of free market forces in determining the direction of worldwide investment flows will maximize the efficient use and allocation of capital resources. Foreign direct investment in the United States supplements domestic private investment and to that extent stimulates United States productivity, output, income and employment. On occasion it has also had the added advantage of injecting innovative technology, and improved products and management techniques into the American economy.

The Department of State has engaged in a continuing review and assessment of the above-described policy in response to the changing circumstances of American international economic relationships. We are convinced that this policy has been in the long-term best interests of this nation and consequently would not support its abandonment without the most careful consideration of alternatives. Such consideration is particularly important in the case of oil producer direct investments in the United States because (a) the potential for such investments on a very large scale is quite recent in origin; and (b) such investments to date have not attained proportions large enough to allow for reliable evaluation.

It is now evident that a considerable enlargement of the role of the OPEC (Organization of Petroleum Exporting Countries) nations in the affairs of the world is inevitable. In this regard, it is important to note that we hold many interests in common with the oil producers. The recently-launched United States-Saudi Arabian Joint Commission is one example of the opportunities for cooperation with these countries which promise to yield benefits to both them and us.

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Investment flows between the United States and the oil producers should also serve to strengthen our relations with them. Recycling of oil producer excess financial reserves in one form or another into the economies of the oil consuming nations, including the United States, is vital to the preservation of equilibrium in the international economic order. Restrictions on the ability of the oil producers to invest those petrodollars would not only exert strains on our domestic economy but also might influence them to reduce the supply of oil for export to the consuming nations. In addition, such restrictions might well contravene the provisions of the Organization for Economic Cooperation and Development's Code of Liberalization of Capital Movements, of which the United States has been a leading proponent. Such action could encourage retaliatory measures by other nations against our own sizeable direct investments abroad. Finally, with regard to the possibility of the oil producers acquiring control over important sectors of the American economy, the restrictions mentioned earlier, together with our antitrust laws and national security regulations, should prove adequate to protect our national interests.

Of course, there is more that we need to know about the problem of foreign direct investment in the United States. The Department of State supports the Foreign Investment Study Act passed this week by the House of Representatives following earlier approval by the Senate. This bill provides for collection of the data needed to answer many of the questions raised here. We are convinced that moving promptly to gather information needed for policy review will serve America's needs better than subjecting investment now to restrictions, the ramifications of which remain unexplored.

Please call on me if I or my staff can be of any further assistance to you.

Cordially,

LINWOOD HOLTON,
Assistant Secretary
for Congressional Relations.

COUNCIL ON INTERNATIONAL ECONOMIC POLICY,
Washington, D.C., September 20, 1974.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your letter of September 13th requesting our comments on S. 3955, the Foreign Investment Review Act.

As you know, Ambassador William D. Eberle, Executive Director of the Council on International Economic Policy, testified on behalf of the Administration before the Subcommittee on Foreign Commerce and Tourism regarding this legislation on September 18th.

The Administration has supported the approach taken by S. 2840, and the companion measure introduced by Congressman Culver in the House of Representatives. That bill requires the Treasury and Commerce Departments to undertake an in-depth study of existing foreign investment in the United States. The Commerce and Treasury Departments, anticipating passage of this legislation, are already making preparations for an extensive survey to determine the extent of foreign investment in the United States as of the end of 1974. In accordance with the provisions of this legislation, the agencies will also be studying the adequacy of information, disclosure, and reporting requirements and procedures with respect to foreign investment in the U.S., and making recommendations on methods for keeping information and statistics on foreign direct investment activities current.

As Ambassador Eberle indicated in his testimony, there are substantial existing data-gathering procedures within the Executive Branch. We agree, however, that improvements are needed and that is the reason for the Administration's support of S. 2840.

We have a number of problems with S. 3955 as drafted, which may be summarized as follows:

(1) Reporting requirements aimed specifically at foreign investors may deny them the equality of treatment with domestic investors which is an essential part of our basic policy toward foreign investors. While there is a problem of determining the ultimate beneficial owner of securities, particularly when they are held by a nominee, this problem involves both the domestic ownership of

corporations as well as foreign ownership and it would be preferable to deal with the general problem of nominee ownership rather than singling out foreign investors for discriminatory treatment.

(2) The provisions of S. 3955 may be insufficient to require disclosure by a foreign nominee of the name of the ultimate investor. Further, if the law is applied extra-territorially, it may conflict with the laws of other countries.

(3) The establishment of a Foreign Investment Review Administration would be widely interpreted abroad as the first step toward a system of screening foreign investment in the U.S., which would be contrary to our established policy of freely admitting foreign investment. In addition, this would conflict with our on-going efforts to persuade other nations to relax their existing investment restrictions.

(4) The possibility of increased U.S. restrictions may generate concern in the oil producing nations that they might not be able to continue to invest their surplus revenues in the United States. This would have adverse consequences for our recycling efforts and might cause them to reduce production, with detrimental effects on the U.S. economy.

(5) The reporting system set forth in S. 3955 represents one approach to improving our data-gathering capabilities and prejudges the results of the comprehensive review required by S. 2840. We would rather await the results of our review of the various alternative systems than to adopt the system provided for in S. 3955.

(6) The survey called for by Section 3(d) of the bill could not be completed in the time allotted and would unnecessarily duplicate the more comprehensive survey now being undertaken by the Commerce and Treasury Departments.

(7) Lastly, additional reporting requirements are not needed *immediately* because existing disclosure requirements, while containing gaps are generally adequate to meet present needs prior to the completion of the more comprehensive review.

The Administration had intended to make recommendations for the improvement of existing reporting requirements within the time-frame specified in S. 2840. In view of the substantial congressional concern, however, we will attempt to accelerate and intensify the comprehensive review of these requirements in an effort to make specific recommendations for improvement as soon as possible. We believe this approach will obtain the necessary data on foreign investment in the U.S. in a manner which avoids creating an unnecessary new bureaucracy and which would not be interpreted abroad as a basic policy change.

We appreciate the opportunity to comment on this important legislation.

Very truly yours,

DAVID A. HARTQUIST,
General Counsel.

Senator INOUYE. I am pleased to welcome as our first witness this morning the sponsor of S. 3955, Senator Howard Metzenbaum of Ohio.

STATEMENT OF HON. HOWARD M. METZENBAUM, U.S. SENATOR FROM OHIO

Senator METZENBAUM. Thank you, Mr. Chairman.

Mr. Chairman, prior to getting into my remarks, I would like to take this opportunity to commend you for the leadership you have exhibited in this and in so many other areas of concern to Congress. The fact that you have recognized the problems involved in this particular subject and that you have scheduled a hearing so promptly, only 19 days after the legislation was introduced, is typical of the approach you have brought to so many legislative matters during your career in Congress.

Your bill, S. 2840, to authorize the Secretary of Commerce to conduct a study of foreign direct and portfolio investment in the United

States, provided a major step forward in dealing with the very problem we have before us today. But once again, as is typical of the kind of leadership you have provided to the Senate, you recognized that events have moved so rapidly that while conducting the overall study of foreign investment mandated by your bill, we must at the same time strengthen existing laws to obtain the facts necessary to approach the problem properly. I am therefore very proud of the fact that you are a coauthor and cosponsor of this legislation.

Over the past several months, I have become increasingly concerned with the growing hoard of dollars concentrated in the hands of the oil-exporting nations of the world and with what such a great concentration of economic power could mean for our own economy.

In this year alone, the oil exporting countries will receive $105 billion in total oil income. The World Bank estimates that these countries will be able to absorb approximately $45 billion internally—less than half the total. Further, a few days ago, I noticed a news report to the effect that Saudi Arabia, one of the major oil-exporting countries, has indicated that it will not be possible to use as much oil revenue domestically as that country had previously planned. This means that a bit more surplus capital will be added to the $60 billion in liquid funds already available for investment by oil exporting countries around the world in 1974.

In a speech I made on June 25, I gave an illustration of just what purchasing power of this magnitude would mean were the oil exporters to decide to invest a large proportion of their surplus wealth in the common stock of American corporations.

As you can readily see from the chart I have had prepared, based on June 24, 1974 closing prices on the New York Stock Exchange, $46.8 billion, or roughly 75 percent of the $60 billion surplus, would have been sufficient to acquire uncontested control—51 percent of voting stock—in 11 key American corporations.

Now it is a fact, Mr. Chairman, that nobody really buys 51 percent of a corporation in order to gain control, a much smaller percentage is needed but I have used that figure in order to illustrate my point.

The list of corporations includes the giants of American industry: A. T. & T., General Motors, IBM, United Airlines—the largest airline in the country—U.S. Steel, Xerox. It also includes some of the major defense industries: General Dynamics and Lockheed. It includes Boeing and Dow Chemical—all of these for just 75 percent of 1 year's income.

Furthermore, we must consider the fact that this list was prepared in June 1974. As we are all aware, most stock prices have dropped substantially since then, so much so that had our hypothetical investors waited until September 6, 1974, they could have acquired control of these very same corporations for just $39,829,111,000, nearly $7 billion less than the same acquisitions would have cost them in June.

This difference, almost $7 billion, though only a fraction of the total in question, is a staggering amount of money in itself. To illustrate, at September 6 closing prices, this sum could have purchased a majority interest in yet another 10 major American corporations.

These 10 corporations include a major oil company, Texaco; an important farm equipment manufacturer, International Harvester;

leading firms in the metal, paper, rubber, and arms industries—Aluminum Co. of America, Kennecott Copper, International Paper, Goodyear Tire and Rubber, and Colt. In addition, the list includes three companies in the consumer products and services area whose names are household words: Singer, Campbell Soup, and Howard Johnson.

Mr. Chairman, a special report that I have had prepared brought a startling fact to my attention. Using World Bank estimates of likely oil exporter income over the next few years, it is clear that the OPEC nations will have sufficient surplus petrodollars by 1979—just 5 years from now—to buy up 100 percent of all the stock of all the companies listed on the New York Stock Exchange. This should give us some idea of the dimensions of the problem with which we are dealing.

I wish to emphasize at this point that my purpose in presenting these figures to you is not to create the impression that there is some foreign plot afoot to buy America. I do not believe that anything of the sort exists, nor do I consider such a development even remotely probable.

Furthermore, I do not want to appear to be making a case against foreign investment in our economy by presenting these figures. I welcome productive investment, whatever the source, and I hope that the oil exporters and other dollar-surplus countries will find our economy an attractive place in which to put their money to work.

My intention, then, is not to create panic. Rather, it is to illustrate in as graphic a manner as possible the realities of the new situation with which we shall have to cope in the immediate future.

It is a fact that the sudden and massive shift of wealth to the oil-exporting countries is an event without precedent in the history of world commerce.

It is a fact that these countries have staggering amounts of money to invest abroad. It is reasonable to expect that they will want to put a good percentage of their surplus into the American economy, which remains, despite all our economic problems, the soundest and the safest place in the world to invest.

And it is a fact that we have had no experience in dealing with capital movements on the scale which has now become possible and even probable. Let us not overlook the fact that the amount and the magnitude of this foreign investment could create some problems for us. The OPEC countries themselves have problems as well. What, for example, do they do with their excess wealth? How do they use it? How do they make it productive?

We do not really know what this new situation will mean for our financial and credit institutions, and we do not yet know what it might imply for our economic sovereignty. David Rockefeller, head of the Chase Manhattan Bank, has warned that this massive movement of money could mean "economic and political chaos" marked by "disruptive domestic unemployment and depression" in the United States.

Mr. Chairman, I submit that prudence demands that we act to deal responsibly now with the problems these facts will surely pose for us in the very near future. Too often, our Government reacts to a problem after the fact, rather than preparing for it in advance.

When the oil shortage occurred last year, our Government tried to ascertain the facts about domestic oil inventories from the oil com-

panies. We never did receive that information and even at this moment, we can't get it. We are talking about preparing for a situation which will come as surely as night follows day.

In my view, our first order of business should be to learn the facts. Without information we cannot reach sound conclusions. We need to provide a mechanism through which the President, the Congress, and the American public may have accurate and current information about the true nature and scope of foreign investment in our country.

I find it very hard to believe that in this Nation of ours, as strong, as powerful, and as bureaucratic as we are, no such mechanism exists at present. Our Government has no way to determine the real extent of foreign investment in America or even to learn the identities of foreign investors. The Government does not collect such information systematically, nor does it have the power to do so.

That is why we need S. 3955. Let me briefly explain its substance.

The act instructs the Secretary of Commerce to assemble, analyze and make public information on the nature, extent, sources of and trends in foreign investment in the United States. The Secretary would be required to publish reports on foreign investment monthly and detailed summaries and analyses on a quarterly basis. Let me take just a moment to comment on the question of making the information public, because I think that public disclosure is a main thrust of this legislation.

I have been informed by responsible Government officials that through military intelligence, the CIA, Treasury, the SEC, Commerce, and other governmental arms, foreign investment in substantial amounts can now be monitored.

I question the accuracy of that representation, but even if it were accurate, it would not change my view as to the need for this legislation. I believe that the American public wants to know who is controlling American industry. I don't believe that the people will be content in being assured that the military has all the information necessary to protect American interests. I believe that men and women working in American plants want to know who controls American companies.

The act further provides that any foreign investor owning or controlling, directly or indirectly, 5 percent or more of a publicly traded concern would have to be identified by name, citizenship, and place of residence. At this point, I would like to say that the 5 percent is a rather arbitrary figure. If it is the judgment of the committee that the figure should be lower or higher, it can be changed. Certainly, the precise figure is not a matter of great moment.

In any case, the same disclosure provisions I have already described will also apply to one or more foreign investors owning or controlling, directly or indirectly, 25 percent or more of any U.S. business concern whose stock is not traded on a national securities exchange and whose net worth is $3 million or more at the time of acquisition. The Secretary would also be authorized to conduct a survey of foreign investment existing at the time of enactment. Finally, he would be empowered to request and receive information on foreign investments from other Government agencies.

Some individuals with whom I have discussed this legislation have expressed concern that foreign interests might interpret a disclosure requirement as an implied threat of expropriation, or as a first step

toward restricting foreign investments. As a result, they suggest, foreign investors might become wary of placing their capital, which we badly need, in our economy.

At first glance, this argument seems to have some merit, but I do not believe that it holds up under closer examination. Indeed, as I have already suggested, it is my view that disclosure is very much in the interests of legitimate foreign investors. Without disclosure, it is entirely conceivable that the extent of actual foreign holdings of American assets could become exaggerated in the public mind. As a result, foreign ownership could become a major political issue in the future. With disclosure, the American people will have a sense of assurance. They will know the facts. If they have objections, these will be known long before specific problems arise.

Without disclosure, some individuals may come up with irresponsible ideas which are not in our national interest. I could see such a drama developing if for example, it were suddenly discovered that a foreign government had acquired control of some major company. This might produce a public reaction which, with public disclosure, might not happen.

In addition, as the sophisticated investor knows, a great many countries already require disclosure of foreign investment. Indeed, many countries have had this kind of law on the books for years.

Most of the industrialized European countries have an automatic reporting mechanism built into their central banking systems. In these nations, and in Japan as well, all banks and brokers must immediately report all transactions involving foreign capital to the central banking authorities.

Since the early 1960's, Canada has required that all foreign investment in that country be reported under the terms of the Corporations and Labour Unions Reporting Act.

In addition, a number of countries go much further. They have laws designed to screen and in some cases to restrain foreign investment. These nations include Australia, Canada, France, Japan, Mexico, Sweden, West Germany, and many developing nations concerned to protect their natural resources.

At least two of the OPEC nations themselves—Iran and Venezuela—have both disclosure requirements and restrictions on foreign investment.

France and Japan have eased restrictions on foreign investment in the last few years, although both retain their disclosure requirements. The West Germans also require disclosure but have never implemented the tough and comprehensive foreign investment control legislation which they do, in fact, have on the books.

Within the last 2 years, both Canada and Australia have adopted highly technical laws for screening and approving foreign investment. This legislation is not intended to exclude foreign investment, but rather to direct it to uses which these nations view as in their national interest. Canada and Australia, as well as the other nations with similar legislation, impose both civil and criminal penalties for infractions.

Mr. Chairman, I wish at this time to introduce three appendices to my testimony with reference to foreign practice in the area of disclosure. The appendices are far too lengthy and complicated to read here, but I think they ought to be a part of the record. These materials

indicate that the proposal before you is an extremely modest one compared with current practice in many other nations of the world.

Mr. Chairman, it is my strong belief that we badly need foreign investment disclosure legislature and we need it now. The great accumulation of liquid capital to which I have repeatedly referred is coming into existence at this very moment. I contend that we cannot now obtain accurate information on this topic without further legislation.

In addition, we must be aware that the OPEC nations will, within 2 years, control a sum approximating $130 billion, something that cannot be overlooked with reference to its possible impact upon the American stock market. It is a reality with which we must presently cope, not something which may or may not develop in the distant future.

Mr. Chairman, Senator Pearson, I am deeply grateful to the committee for the opportunity given me to address myself to this issue. I commend the act to you and hope that you will share my sense of urgency about enacting it as soon as possible. In this matter, I do not think that we can afford to defer action.

Thank you very much.

Senator INOUYE. Thank you very much, Senator Metzenbaum. Without objection, the review of laws on disclosure and regulation of foreign investment in selected countries, dated September 18, 1974, will be made part of the record.[1]

Senator INOUYE. I would like to commend the distinguished Senator from Ohio for his presentation and for his important leadership in this area. I wish to join him in assuring all who may have interest in this matter that the intent of this measure is not to discourage foreign investment. I think the major intent set forth in your statement and I would like to underline that point by reading that:

> Our first order of business should be to avail ourselves of the facts. Without information we cannot reach sound conclusions. We need to provide a mechanism through which the President, the Congress, and the American public may have accurate and ongoing information about the true nature and scope of foreign investment in our country.

And without these facts it would be not only futile but dangerous to make policy.

Once again, I think you very much, sir, for your contribution.

Senator METZENBAUM. Thank you.

Senator PEARSON. Senator, I concur with the chairman. I congratulate you on your statement and on your attention to this very serious subject.

Some years ago when we were having hearings on some environmental questions, one of the scientists that testified in those hearings said that our ability, particularly in the scientific field, to detect exceeded our ability to interpret. Here we have no ability to detect.

Senator METZENBAUM. Correct.

Senator PEARSON. I was somewhat surprised to learn when the legislation dealing with this subject was introduced some time ago that, in a national economy where we seem to measure everything and analyze all statistics, both in industry and in the government, we really had no great wealth of information about foreign investment.

[1] See p. 84.

I don't think we can seek to deal with it intelligently, of course, until we know what the true situation is. So this is a great step in the right direction, it seems to me, following the measure introduced by the chairman and others and which, as he states, is now in conference. I think these hearings are important today and, again, I thank you for making a contribution to the record.

Senator METZENBAUM. Thank you.

Senator INOUYE. Senator, the subcommittee will be most pleased to have you join the panel here as we proceed in our hearings.

Senator METZENBAUM. Thank you. I would be happy to participate.

[The statement follows:]

STATEMENT OF HON. HOWARD M. METZENBAUM, U.S. SENATOR FROM OHIO

FOREIGN INVESTMENT REVIEW ACT OF 1974

Mr. Chairman, before commencing this hearing, I will read into the record the total list of co-sponsors as of this date.

Mr. Chairman, I would like to commend you for the leadership you have exhibited on this subject, as in so many others in Congress. Your bill, S. 2840 to authorize the Secretary of Commerce to conduct a study of foreign direct and portfolio investment in the U.S. provided a major step forward in an effort to study the very problem we have before us today. But typical of your leadership in the Senate you recognized that events have moved so rapidly that it has become necessary that while the total study of the foreign investment problem is being conducted we need to strengthen existing laws if we are to gain the necessary facts even to study the problem.

Over the past several months, I have become increasingly concerned with the rapidly growing hoard of dollars concentrated in the oil-exporting nations of the world, and with what such a great concentration of economic power could mean for our own economy.

In this year alone, the oil exporting countries will receive $105 billion in total oil income. The World Bank estimates that these countries will be able to absorb approximately $45 billion internally, less than half the total.

This leaves $60 billion as surplus capital, liquid funds available for investment around the world, in 1974.

In a speech I made on June 25, I gave an illustration of just what purchasing power of this magnitude would mean were the oil exporters to decide to invest a large proportion of their surplus wealth in the common stock of American corporations.

As you can readily see from the chart I have had prepared, based on June 24, 1974 closing prices, $46.8 billion, roughly seventy-five percent of the $60 billion surplus would have been sufficient to acquire uncontested control—fifty-one percent of voting stock—in eleven key American corporations.

These eleven include the giants of American industry: A.T. & T., Dow Chemical, General Motors, I.B.M., I.T.T., U.S. Steel, Xerox, as well as United, the nation's largest airline, and important defense contractors like Boeing, General Dynamics, and Lockheed.

Corporation:	*Price of majority control as of June 24, 1974*
A.T. & T	$13,046,980,000
Boeing	192,782,750
Dow Chemical	3,164,314,250
General Dynamics	128,755,125
General Motors	7,205,900,625
IBM	15,953,274,000
ITT	946,199,750
Lockheed	26,068,500
United Airlines	275,425,500
U.S. Steel	1,184,464,750
Xerox	4,704,334,875
Total	46,828,500,125

As we are all aware, most stock prices have dropped substantially since late June, so much so that had our hypothetical investors waited until September 6, they could have acquired control of the same eleven corporations for nearly $7 billion less than the same acquisitions would have cost them in June.

Corporation:	*Price of majority control as of September 6, 1974*
A.T. & T	$11, 999, 264, 060
Boeing	198, 212, 520
Dow Chemical	2, 776, 103, 400
General Dynamics	89, 388, 720
General Motors	5, 757, 373, 297
IBM	13, 421, 547, 090
ITT	842, 520, 000
Lockheed	23, 896, 496
United Airlines	182, 263, 163
U.S. Steel	1, 205, 192, 538
Xerox	3, 333, 349, 800
Total	39, 829, 111, 084

This difference, almost $7 billion, though only a fraction of the total in question, is a staggering amount of money in itself. To illustrate, at September 6 closing prices, this sum could have purchased a majority interest in yet another 10 major American corporations.

These 10 corporations include a major oil company, Texaco; an important farm equipment manufacturer, International Harvester; leading firms in the metal, paper, rubber and arms industries, Aluminum Company of America, Kennecott Copper, International Paper, Goodyear Tire and Rubber, and Colt. In addition, the list includes three companies in the consumer products and services area whose names are household words: Singer, Campbell Soup, and Howard Johnson.

Corporation:	*Price of majority control as of September 6, 1974*
Texaco	$3, 241, 111, 080
International Harvester	276, 441, 165
Alcoa	743, 863, 560
Campbell Soup	446, 285, 700
International Paper	943, 957, 980
Kennecott Copper	481, 966, 065
Goodyear	536, 677, 717
Singer	172, 447, 958
Colt	83, 353, 444
Howard Johnson	57, 115, 665
Total	6, 983, 220, 334

Based on World Bank estimates, and a special report I have recently had prepared, the OPEC (Organization of Petroleum Exporting Countries) nations will have enough surplus petro-dollars by 1979—just five years from now—to buy up 100 percent of all the stock of all the companies listed on the New York Stock Exchange.

I wish to emphasize at this point that my purpose in presenting these figures to you is *not* to create the impression that there is some foreign plot afoot to buy American. I do not believe that anything of the sort exists, nor do I consider such a development even remotely probable.

Furthermore, I do not want to appear to be making a case against foreign investment in our economy by presenting these figures. I welcome productive investment, whatever the source, and I hope that the oil exporters and other dollar surplus countries will find our economy an attractive place in which to put their money to work.

Our intention, then; is not to create panic. Rather, it is to illustrate in as graphic a manner as possible the realities of the new situation with which we shall have to cope in the immediate future.

It is a fact that the sudden and massive shift of wealth to the oil exporting countries is an event without precedent in the history of world commerce.

It is a fact that these countries have staggering amounts of money to invest abroad. It is reasonable to expect that they will want to put a good percentage of their surplus into the American economy, which remains, despite all our economic problems, the soundest and the safest place in the world to invest.

And it is a fact that we have had no experience in dealing with capital movements on the scale which has now become possible and even probable. We do not really know what this new situation will mean for our financial and credit institutions, and we do not yet know what it might imply for our economic sovereignty. David Rockefeller, head of the Chase Manhattan Bank, has warned that this massive movement of money could mean "economic and political chaos" marked by "disruptive domestic unemployment and depression" in the United States.

Mr. Chairman, I submit that prudence *demands* that we act now to deal responsibly with the problems these facts will surely pose for us in the very near future. Too often our government reacts to a problem after the fact, rather than being prepared for it in advance.

We did that at the time of last year's oil shortage, and we may very well do the same in connection with American corporations suddenly becoming controlled and owned by foreign investors.

In my view, our first order of business then should be to avail ourselves of the facts. Without information we cannot reach sound conclusions. We need to provide a mechanism through which the President, the Congress, and the American public may have accurate and on-going information about the true nature and scope of foreign investment in our country.

Currently, no such mechanism exists. Our government has no way to determine the true extent of foreign investment in America or even to learn the true identities of foreign investors. The government does not collect such information systematically, nor does it have the power to do so.

That is why we need S. 3955. Let me briefly explain its substance.

The Act instructs the Secretary of Commerce to assemble, analyze *and make public* information on the nature, extent, sources of and trends in foreign investment in the United States. He would be required to publish reports on foreign investment monthly and detailed summaries and analyses on a quarterly basis. Let me take just a moment to comment on the question of the information being made public.

I have been informed by responsible government officials that through military intelligence, the CIA, Treasury, the SEC, Commerce, and other governmental arms, foreign investment in substantial amounts can presently be monitored.

I question the accuracy of that representation, but even if it were accurate, it would not change my view as to the need for this legislation. I believe the American public wants to know who is controlling American industry. I don't believe they would be content nor comfortable is being assured that the military knows all the answers. And I also believe that men and women working in American plants want to know who controls the company.

The Act further provides that any foreign investor owning or controlling directly or indirectly 5 percent or more of a publicly traded concern would have to be identified by name, citizenship, and place of residence. The same provisions apply to one or more foreign investors owning or controlling directly or indirectly 25 percent or more of any U.S. business concern whose stock is not traded on a national securities exchange and whose net worth is $3,000,000 or more at the time of acquisition. The Secretary would also be authorized to conduct a survey of foreign investment existing at the time of enactment. Finally, he would be empowered to request and receive information on foreign investments from other government agencies.

Some individuals with whom I have discussed this legislation have expressed concern that foreign interests might interpret a disclosure requirement as an implied threat of expropriation, or as a first step toward restricting foreign investments. As a result, they suggest foreign investors might become wary of placing their capital, which we badly need, in our economy.

At first glance, this argument seems to have some merit, but I do not believe that it holds up under closer examination. Indeed, as I have already suggested, it is my view that disclosure is very much in the interests of legitimate for-

eign investors. Without disclosure, it is entirely conceivable that the extent of actual foreign holdings of American assets could become exaggerated in the public mind and that foreign ownership could become a major political issue at some time in the future.

In addition, as the sophisticated investor knows, a great many countries already require disclosure of foreign investment. Indeed, many countries have had this kind of law on the books for years.

Most of the industrialized European countries have automatic reporting mechanisms built into their central banking systems. In these nations, and in Japan as well, all banks and brokers must immediately report all transactions involving foreign capital to the central banking authorities.

Since the early 1960's, Canada has required that all foreign investment in that country be reported under the terms of the Corporations and Labour Unions Reporting Act.

In addition, a number of countries go much further. They have laws designed to screen and in some cases, to restrain foreign investment. These nations include Australia, Canada, France, Japan, Mexico, Sweden, West Germany, and many developing nations desirous of protecting their natural resources.

At least two of the OPEC nations themselves—Iran and Venezuela—have both disclosure requirements and restrictions on foreign investment.

France and Japan have eased restrictions on foreign investment in the last few years, although both retain their disclosure requirements. The West Germans also require disclosure but have never implemented the tough and comprehensive foreign investment control legislation which they do, in fact, have on the books.

Within the last two years, both Canada and Australia have adopted highly technical laws for screening and approving foreign investment. This legislation is not intended to exclude foreign investment, but rather to direct it to uses which these nations view as in their national interest. Canada and Australia, as well as the other nations with similar legislation impose both civil and criminal penalties for infractions.

I wish at this time to introduce three appendices to my testimony with reference to foreign practice in the area of disclosure. I hope that this information will provide some perspective for those who believe that an American disclosure requirement would drive foreign capital away.

Mr. Chairman, it is my strong belief that we badly need foreign investment disclosure legislation and we need it now. The great accumulation of liquid capital to which I have repeatedly referred is coming into existence at this very moment. It is a reality, not something which may or may not develop in the distant future.

I am deeply grateful to the Chairman for the opportunity he has given me to address myself to this issue. I commend the Act to you and hope that you will share my sense of urgency about enacting it as soon as possible. In this matter, I do not think that we can afford to defer action.

Senator INOUYE. Our next witness is Mr. William Eberle, repreresenting the Council on International Economic Policy.

The subcommittee will stand in short recess. Mr. Eberle is on his way here.

[Recess.]

Senator INOUYE. The subcommittee will please come to order.

Our next witness is the Honorable William Eberle, the Executive Director of the Council on International Economic Policy, Washington, D.C. Welcome to the committee, Mr. Ambassador.

STATEMENT OF HON. WILLIAM D. EBERLE, EXECUTIVE DIRECTOR, COUNCIL ON INTERNATIONAL ECONOMIC POLICY

Mr. EBERLE. Thank you, Mr. Chairman, for your invitation to appear before you. I apologize for being late, but I was down with the Senate Finance Committee discussing the trade bill, which hopefully will be appearing soon.

Mr. Chairman, if it's all right with you, I would like to file my full statement for the record and then highlight it.

Senator INOUYE. Without objection, your full statement will be made part of the record, sir.

Mr. EBERLE. Thank you, sir.

As you know, Mr. Chairman, the Council on International Economic Policy is the executive branch interagency forum within which official policy on foreign direct investment in the United States has been formulated. We therefore have a very strong interest in the proposals that you are considering this morning.

I have read Senator Metzenbaum's testimony and I can assure you we share many of the concerns that he's outlined here. I'm delighted to have the opportunity to follow him in testifying.

You may recall that at your earlier hearings we submitted to you a comprehensive statement of administration policy on foreign investment in the United States reflecting the results of a high-level executive branch review last year. I think it would be useful for me to submit it again for the record rather than go into it in detail. However, I would like to summarize the salient points of that policy.

The basic thrust of U.S. international investment policy is to encourage the free flow of capital into the United States as a means of maximizing the operating efficiency of the world economy. In accordance with this general principle, we admit foreign investors freely; we give them equality of treatment with domestic investors once they are established here; and we offer no special incentives and impose few barriers. The barriers that we do have are, I think, well known, and we have opposed any attempts to add to the list of existing restrictions as unjustified by economic analysis—a position that we still consider sound and will continue to adhere to except in those cases where new restrictions are necessary on the grounds of national security or to preserve our essential national interests.

In connection with this overall review we focused on the problem of the quality of the available data with respect to such investment and concluded that we did need more and better information. Accordingly, we supported your bill, S. 2840, Mr. Chairman, and the companion measure introduced in the House by Representative Culver, which require the Treasury and Commerce Departments to undertake an in-depth study of existing foreign investment in the United States. In anticipation of the passage of this legislation, the Commerce and Treasury Departments are already making preparations for an extensive survey of the U.S. business community to determine the extent of foreign investment in the United States as of the end of 1974.

These agencies will, in accordance with the provisions of the legislation, be studying the adequacy of our information, disclosure, and reporting requirements and procedures with respect to foreign investment in the United States. They will also be making recommendations on methods whereby information and statistics on foreign direct investment activities in this country can be kept current.

Now I understand that our existing data-gathering requirements have been explored in some detail with you in the past, but I do think it would be useful for us to look at them again briefly in relation to the bill you are considering this morning.

The Commerce Department's Bureau of Economic Analysis collects data on foreign direct investment in the United States under regulations designed to obtain information for balance of payments purposes, and these regulations require periodic reports to be filed with respect to every U.S. business enterprise in which foreign persons hold a "controlling interest." This has been interpreted to mean 25 percent or more of the voting securities of such an enterprise.

The SEC has different reporting requirements. They have no special reporting requirements for foreigners but they do require both domestic and foreign investors to file reports on cash tender offers or other acquisitions of beneficial ownership of equity securities of American corporations. This applies to beneficial ownership of more than 5 percent of any class of equity securities registered with the Commission. Also beneficial owners of 10 percent of more of the outstanding voting securities of most corporations are required to disclose information regarding any changes of ownership of such securities on a monthly basis. This also applies to insiders who own equity securities issued by an enterprise.

In addition, on a regular basis the Federal Reserve banks collect information for the Treasury Department on transactions with foreigners in both U.S. and foreign long-term securities. Their reports classify foreign purchases and series of long-term securities by type, for example, stocks and bonds and so forth.

The DOD, under its Industrial Security Regulations, reviews the security clearances for facilities which are determined to be under foreign ownership, control or influence. In connection with this review it requires defense contractors handling classified information to furnish "full and complete information" if "foreign interests" own more than 6% of their equity.

A number of regulatory agencies, ICC, FCC, FPC, CAB, all collect information on the stockholders of companies under their jurisdiction.

Now these existing reporting requirements do provide a substantial amount of information to the government and to the public, but there are still a number of problems associated with them as means of gathering data concerning foreign investments. One example, and I know this is one of Senator Metzenbaum's concerns is the question of the reporter's obligation under these requirements to report on foreign beneficial ownership. In many cases this term is not precisely defined. We find in some instances that foreigners—or even domestic reporters—will record the voting ownership with one person and the dividend ownership with somebody else, both being beneficial owners, and will only report one of these in their reports.

Many times the nationality of a foreign investor may not be revealed if the securities are held by a nominee or other intermediary, and we cannot get information on the identity of the original investor because we are hindered by the provisions of our tax agreements with some countries and by foreign laws. So we still have a long way to go to get the accurate information that we want.

Now let me turn quickly to the bill you're considering this morning, the "Foreign Investment Review Act," which has two key points as we see it. First, it would establish in the Department of Commerce a Foreign Investment Review Administration; and, second, it would

require foreign investors to file reports disclosing their name, nationality and extent of ownership.

Although some of the existing reporting requirements do require identification of the foreign "beneficial owner," there is no way to be certain that required information is filed or that it is accurate, especially when the securities are held by a nominee.

The critical part of Senator Metzenbaum's bill appears to be addressed to this problem of going behind a nominee to determine the identity of the ultimate investor. Although we share this concern, we have a number of problems with the bill as it is drafted. I don't mind that, if you don't.

Senator INOUYE. Unfortunately, we have to pay attention that it is the call for a vote. If you don't mind, I shall call a short recess. It should take us just a few minutes to go and return.

Mr. EBERLE. Thank you.

[Recess.]

Senator INOUYE. Mr. Ambassador, please continue.

Mr. EBERLE. Mr. Chairman, I think I was about to begin discussing some of our concerns with the bill under consideration.

The first concern that we have is that the bill appears to be aimed specifically at foreign investors and thus may deny them equality of treatment with domestic investors, in contradiction of an essential part of our basic policy toward foreign investment. We believe that the way to get at this is to deal with the general problem of the nominee ownership and not single out foreign investors. There's also a concern of how we get there. I think that if we were to move without careful planning as to how we handle this question, we might stimulate withdrawals from our financial markets by foreign investors who were uncertain of what we were going to do. I think that if we can deal with the disclosure question on a general basis people will understand that we are not singling out the foreign investor, and we will still end up accomplishing our basic objectives.

Second, we believe that the provisions of this bill may be insufficient to require disclosure by a nominee of the name of the ultimate investor. If the law is applied extra-territorially, it may conflict with the laws of other countries which have bank secrecy acts. Now this is an interesting question. In principle, we do have the power to require a nominee to identify an American beneficial owner. The problem we encounter is that we may not be able to get at the information on who is behind a nominee if the investor resides in another country. We have to find a way to get at this not only through legislation but also possibly through some sort of international understanding.

Third, we feel strongly that the establishment of a Foreign Investment Review Administration at this time would be taken by many investors overseas as being a first step toward comprehensive restrictions on foreign investment in the United States. This would be contrary to established public policy.

The next concern we have is that the possibility of increased U.S. restrictions implicit in the creation of an investment review agency might give rise to concern in the oil-producing nations that they might not be able to continue to invest their surplus revenues in the United

States. We think this would be detrimental to the United States and international economics.

Another problem we have is that the reporting system mandated in S. 3955 represents only one of a number of alternative ways of improving our data-gathering capabilities and prejudges the results of the comprehensive review required by the chairman's bill. We would prefer to wait for the completion of that study or be further down the road with it before we take any action in this area.

I think, lastly, that the additional reporting requirements are not needed immediately, since our existing requirements will be sufficient during the short time it will take us to do this comprehensive review.

I would like to say on behalf of the administration, that we will make every effort to accelerate this review, and we will check with each of the agencies concerned and revise our timetable for completing it so that we can present some proposals earlier than we had planned. In no event would we return with our recommendations later than the beginning of the next session of Congress.

Also in recognition of your concern with this area, we will work with your committee staff to come up with the kind of recommendations that could be useful in preparing an overall solution to this problem.

Mr. Chairman, we do think it's important that this be a well-thought-out effort that does not threaten our open-door policy for investment. Our overall objective is to get information not only into the hands of the government, but also to the public. But we should do that after a comprehensive and well-thought-out study. I'm hopeful that we can submit the results of that effort at the beginning of the next Congress.

Mr. Chairman, thank you for this opportunity to be here. I will be happy to answer any questions that you might have.

Senator INOUYE. Thank you very much, Mr. Ambassador.

As you may be aware, it is not our intention to discourage foreign investors. It is to the contrary. We are hoping to encourage much more than currently exists, and I believe I speak for Senator Metzenbaum when I say that we are open to all constructive suggestions to improve the bill. For example, I am certain a review board provision can be deleted if necessary. Second, I think your suggestion that equal treatment be granted for domestic and foreign investors is a reasonable one, and we can very easily incorporate that thought in this bill.

Last spring, before this subcommittee, the deputy director of the council and other administration witnesses estimated that the amount of direct foreign investment in the United States in 1973 was about $2 billion. At that time private estimates were in excess of $3 billion. Recently, the Department of Commerce estimated that the amount of foreign investment in the 1973 figure was approximately $3.5 billion, which is a substantial difference. These are some of the statistical inconsistencies—or possible inaccuracies—that concern us.

The Congress has been told that the Government has sufficient regulatory agencies and provisions in the law which would provide the data necessary for policymaking. However if we receive such different figures, it is a matter of some concern by the subcommittee.

In your statement you have indicated that the United States will continue to support an open investment policy, which, incidentally, the subcommittee supports:

> Unless it becomes evident that a particular measure is necessary on grounds of national security or to preserve our essential national interests.

What kind of circumstances would justify emergency action of the sort you suggest?

This is the last call for voting. I have to leave at this time. I will be right back.

[Recess.]

Senator INOUYE. I'm sorry for all these interruptions, but this morning we had several votes scheduled. I think we can proceed with the rest of the hearing without these votes.

Mr. EBERLE. Mr. Chairman, I think we left off with the question of what we could do about what we might consider to be a threat to our national security resulting from the acquisition by foreigners of U.S. companies. The Defense Department reviews the security clearances for facilities that are foreign owned. The criteria for determining whether a firm is foreign owned and whether foreign interests own more than 6 percent of its equity. Generally, if a defense contractor is determined to be under foreign ownership it may be declared ineligible for a facility security clearance and would therefore lose its defense contracts involving classified work. More than 12,000 firms are covered by this system so we feel we have adequate coverage of those that are essential to our national security. If we turn to the question of whether there would be any threat to the national security with regard to foreign investment in a company such as IBM—assuming for the moment that it had no defense contracts—I think one would have to say that safeguarding the technology of a company like IBM is certainly in the national interest and if it were to be taken over that would give us a great deal of concern.

We also doubt that it's possible for a foreign party to take over a firm like IBM without our knowing about it. Any tender offer or acquisition for more than 5 percent of a firm's stock, and any ownership over 10 percent must be reported to the SEC. So we would certainly have the necessary information available in enough time for us to act to protect our interests.

Senator INOUYE. What sort of emergency action would the executive take if it felt that the national interests were being endangered?

Mr. EBERLE. One option we have is to act under the "Trading with the Enemy Act," which is a rather extreme power. As I mentioned earlier if a foreign investor were to buy a contractor with the Department of Defence, it would lose its defense contracts. That would have a major impact on the business of the U.S. enterprise and probably would discourage the foreign party from buying it. Those are the two basic powers that are available today.

Senator INOUYE. I have several questions which I would like to submit to you, sir, for your consideration and response. If you could submit your response to us for inclusion in the hearing record, I would appreciate that very much.

Mr. EBERLE. I'd be happy to.

43-474—74——3

Senator INOUYE. I thank you very much, sir.
Mr. EBERLE. Thank you, Mr. Chairman.
[The statement follows:]

STATEMENT OF WILLIAM D. EBERLE EXECUTIVE DIRECTOR OF COUNCIL ON INTERNATIONAL ECONOMIC POLICY

Thank you, Mr. Chairman, for your invitation to appear before this subcommittee to discuss S. 3955, the "Foreign Investment Review Act," sponsored by Senator Metzenbaum. I am speaking today on behalf of the Administration, and I understand that other interested government agencies will be submitting separate reports in lieu of testimony. As you may know, the Council on International Economic Policy is the Executive Branch interagency forum within which official policy on foreign direct investment in the United States has been formulated. Hence, we have a strong interest in any proposal which relates to that area.

I also welcome the chance to testify before you today as the beginning of another phase in our continuing cooperation with regard to this subject. This cooperation began early this year when a representative of the Council testified before this subcommittee on the question of foreign direct investment in the United States. In addition members of the CIEP staff and representatives of other Executive Branch agencies have worked with your staff and their counterparts on the House side in shaping the Foreign Investment Study Act which you introduced late last year and which has passed both houses of Congress by substantial majorities. I hope that we can sustain this cooperative effort in the future.

CURRENT U.S. POLICY

You may recall that at your earlier hearings we presented a comprehensive statement of Administration policy on foreign investment in the United States. This presentation reflected the results of a major CIEP review that had been completed in the latter half of 1973. I think that it would be useful for me to submit it again for the record—and I will with the Chairman's permission—but I would also like to outline briefly its major features as background for the remainder of my statement.

The basic thrust of U.S. international investment policy is to encourage the free flow of capital as a means of maximizing the operating efficiency of the world economy. In accordance with this general principle, we admit foreign investors freely; we give them equality of treatment with domestic investors once they are established here; and we offer no special incentives and impose few barriers. The few restrictions we have imposed are well known and generally accepted abroad. We have opposed any attempts to add to the list of existing restrictions as unjustified by economic analysis—a position we will continue to adhere to unless it becomes evident that a particular measure is necessary on ground of national security or to preserve our essential national interests.

In connection with its review last year, the Executive Branch recognized the general problem of the quality of the available data with respect to investment by foreigners in this country and concluded that we needed more and better information in this area. We have enough information to be able to conclude that foreign investment poses no immediate threat to our security and economic well-being, but we believe that it would be desirable to have a better data base for our future policy deliberations.

Accordingly, the Administration has supported the approach embodied in S. 2840, a bill sponsored by the Chairman and the companion measure introduced by Representative Culver in the House. This bill, for the information of those who may not be acquainted with it, would require the Treasury and Commerce Departments to undertake an in-depth study of existing foreign investment in the United States. In anticipation of the passage of this legislation, the Commerce and Treasury Departments are already making preparations for an extensive survey of the U.S. business community to determine the extent of foreign investment in the United States as of the end of 1974. In addition, these agencies will, in accordance with the provisions of the legislation, be (1) studying the adequacy of information, disclosure, and reporting

requirements and procedures with respect to foreign investment in the U.S. and (2) making recommendations on methods whereby information and statistics on foreign direct investment activities can be kept current.

EXISTING DATA GATHERING REQUIREMENTS

Our existing data-gathering requirements have been fully explored in past hearings before this subcommittee, so I will not discuss them in detail. I believe it will suffice, rather, for me merely to sketch for you their major features:

(1) The Commerce Department Bureau of Economic Analysis (BEA) collects data on foreign direct investment in the United States under regulations designed to obtain information for balance of payments purposes. These regulations require periodic reports to be filed with respect to every U.S. business enterprise in which foreign persons hold a "controlling interest" (i.e. 25 percent or more of the voting securities). The reporting regulations also cover investment in real estate for business purposes and do require nominees or other intermediaries to report on behalf of the foreign beneficial owner.

(2) Although the SEC has no special reporting for foreign investors, reports are required regarding substantial ownership of securities of U.S. corporations by all investors (domestic as well as foreign). For example, investors are required to file reports regarding cash tender offers or other acquisitions involving beneficial ownership of more than 5 percent of any class of equity securities registered with the Commission. Also, issuers of securities are required to disclose information regarding ownership of 10 percent or more of outstanding voting securities. Various reports and documents filed with the Commission therefore contain potentially useful information with respect to foreign ownership in U.S. concerns.

(3) The Treasury Department collects information on a regular basis on transactions with foreigners in both U.S. and foreign long-term securities. The information is obtained through a monthly report which is filed by U.S. brokers, dealers, and banks, covering transactions both for their own account and for the account of their customers. In addition, other U.S. business firms report when they deal directly with foreigners in buying or selling securities. The data are collected for the Treasury by the Federal Reserve banks. These reports classify foreign purchases and series of long-term securities by type, for example stocks and bonds. The data also show the country of the foreign purchaser or seller, on the basis of the records of the reporting firm.

(4) The Department of Defense, under its Industrial Security Regulations, reviews the security clearances for facilities which are determined to be under foreign ownership, control, or influence. In connection with this review it requires defense contractors handling classified information to furnish "full and complete information" if "foreign interests" own more than 6 percent of their equity.

(5) A number of regulatory agencies (e.g. ICC, FCC, FPC, CAB, and FMC) collect detailed data relating to the stockholders of companies under their jurisdiction.

While these existing reporting requirements collectively provide a substantial amount of data, there are still a number of problems associated with our data gathering concerning foreign investment here. For example, many foreign investors are unaware of their reporting obligations; the term "foreign beneficial owner" is not always precisely defined; the nationality of foreign investors may not be revealed if the securities are held by a nominee or other intermediary; and strict rules of confidentiality mean that data collected may not be available to the public (or even to other government agencies) and ,when available, only in an aggregate form which does not disclose the identity of individual investors.

S. 3955

The proposed "Foreign Investment Review Act" would establish a centralized reporting system to supplement these existing requirements. I know you have the bill before you but it may be useful to summarize it briefly. In essence, it would (1) establish in the Department of Commerce a Foreign Investment Review Administration and (2) require foreign investors to file reports disclosing their name, nationality and extent of ownership.

ADMINISTRATION ANALYSIS OF S. 3955

Although some of the existing reporting requirements do require identification of the foreign "beneficial owner," there is no way to be certain that required information is filed or that it is accurate—especially when the securities are held by a nominee. The critical part of Senator Metzenbaum's bill appears to be addressed to this problem of going behind a nominee to determine the identity of the ultimate investor. While the Executive Branch shares this concern, we have a number of problems with the bill as drafted. They are as follows:

(1) Reporting requirements aimed specifically at foreign investors may deny them the equality of treatment with domestic investors which is an essential part of our basic policy toward foreign investors. As indicated above, the problem of determining the ultimate beneficial owner is as much of a problem with respect to domestic ownership of our corporations as it is with foreign ownership. We believe it would be preferable to deal with the general problem of nominee ownership and not single out foreign investors for discrminatory treatment.

(2) Even the provisions of S. 3955 may be insufficient to require disclosure by a foreign nominee of the name of the ultimate investor. If the law is applied extra-territorially, it may conflict with the laws of other countries who have bank secrecy acts.

(3) The establishment of a Foreign Investment Review Administration would be widely interpreted abroad as the first step toward a system for screening foreign investment in the United States. This would be contrary to our established policy of freely admitting foreign investment and would make it far more difficult, if not impossible, for us to continue our on-going efforts to persuade other countries to relax their existing investment restrictions.

(4) The possibility of increased U.S. restrictions implicit in the creation of an investment review agency give rise to concern in the oil producing nations that they might not be able to continue to invest their surplus revenues in the United States. This would have adverse consequences for our recycling efforts and might cause them to reduce production, with detrimental effects on the U.S. and international economies. It is possible that other foreign investors might also be motivated to reduce their flows of funds to this country or even disinvest.

(5) The reporting system mandated in S. 3955 represents only one of a number of alternative ways of improving our data gathering capabilities and prejudges the results of the comprehensive review required by the Chairman's bill. We would prefer to await the results of our review of these alternatives rather than to act hastily to implement the system provided for in S. 3955. It is possible that the required data can be obtained administratively by revision of ongoing programs without creating a new bureaucracy or by enacting legislation that would unnecessarily concern foreign investors;

(6) The mini-benchmark survey called for by Section 3(d) of the bill could not be completed in the time allotted and would unnecessarily duplicate the more comprehensive survey now being undertaken by the Commerce and Treasury Departments; and

(7) Additional reporting requirements are not needed immediately because existing disclosure requirements, while containing gaps, are generally adequate to monitor expected inflows prior to the completion of a more comprehensive review of our long range data requirements.

ALTERNATIVES TO S. 3955

The Administration recognizes the need to obtain better data concerning foreign investment in the U.S. and has already responded positively to that need through its support of S. 2840 and by beginning preparations for the comprehensive benchmark survey of foreign investment it requires.

The Administration had intended to undertake a comprehensive review of existing reporting requirements and make recommendations for improvement within the time-frame specified in S. 2840. Given the Congressional concern, we will make every effort to accelerate and intensify a comprehensive review of these requirements with the aim of making as soon as possible such specific recommendations for improvement in them as appear warranted by the facts. The review could focus especially on the problem of ownership through a nominee and could build on the work already done by the Senate Committee on Government Operations on corporate disclosure generally. Such an approach to the problem could, in our view, result in obtaining the necessary data on foreign

investment in the United States in a way which avoids creating a new bureaucracy and which would not be interpreted as a shift in our basic open-door policy.

Thank you again for giving me the opportunity to express the Administration's views on this measure. I will be happy to attempt to answer any questions you might have.

[The following information was subsequently received for the record:]

COUNCIL ON INTERNATIONAL ECONOMIC POLICY,
Washington, D.C., December 24, 1974.

Hon. DANIEL K. INOUYE,
Chairman, Foreign Commerce and Tourism Subcommittee,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Attached are my responses to the questions you posed for the record subsequent to my appearance before your subcommittee in connection with its hearings on S. 3955. I hope that you will excuse our delay in replying.

My staff and I look forward to continuing to work with you and the members of your subcommittee in the year ahead.

Sincerely,

W. D. EBERLE,
Executive Director.

Attachment.

Question 1. In your review of existing reporting requirements, you note that a number of regulatory agencies require disclosure of the identity of investors under certain specified conditions. Is it not true, however, that there have been few, if any, cases of prosecution for failure to report?

Answer. As you know, the Council, in cooperation with the Office of Management and Budget, is currently in the process of conducting a survey of existing U.S. reporting and disclosure requirements pursuant to the commitment I made during my appearance before your subcommittee. Acting on the suggestion you made in your letter to me of October 21, 1974, we included in the final draft of the questionnaire sent to the 19 participating agencies some questions designed to elicit information as to compliance with and enforcement of their disclosure requirements. Since the responses of the agencies are still being analyzed, we believe that it would be premature for us to attempt an assessment of the agencies' enforcement experience at this time. The results of our analysis will be included in the report we plan to issue early next year.

Question 2. Does the CIEP intend to present any views to the SEC in its proposed review of rules on corporate takeovers, tender offers and disclosure? If not, why not?

Answer. Since the Securities and Exchange Commission hearings referred to in your question were held prior to our receipt and evaluation of our survey responses, we did not feel that we had sufficient basis for presenting any views at that time. However, the SEC is a major participant in our study, and we will certainly be consulting with the staff of the Commission in the later stages of the project. We anticipate that by that time, the Commission will have had an opportunity to digest the information and views it received in the course of the hearings and that we will benefit from whatever conclusions have been reached.

Question 3. Please advise the Subcommittee on the current status of the study of international capital movements which was initiated by the United States last year.

Answer. I presume that this question relates to the new reporting system on the foreign currency positions of multinational enterprises established by the Treasury Department earlier this year to supplement existing data systems on capital movements. The reports required under this system are designed to elicit information on the activities of multinational corporations in relation to international exchange markets. The Treasury informs us that although part of the system has been put into effect, the results are not yet available.

Senator INOUYE. Our next witness is Mr. Lawrence Krause, of the Brookings Institution in Washington, D.C. Welcome to the committee, sir.

STATEMENT OF LAWRENCE KRAUSE, BROOKINGS INSTITUTION, WASHINGTON, D.C.

Mr. KRAUSE. Thank you very much, Mr. Chairman.

I am Lawrence Krause, senior fellow at the Brookings Institution, and I am sure I don't have to remind you that the views are my own and not of the Brookings Institution itself.

I am pleased to have been invited to testify before this committee on S. 3955, a proposal which would increase the flow of information on foreign investment in the United States. For many years I have recognized the need for greater availability of information both concerning foreign investments here and American investments abroad. In an area of such great political and economic importance, the Government and the American people must have prompt access to the facts if they are to avoid exaggerated and improper conclusions concerning current developments. Thus, this bill is a proper companion to S. 2840 in which basic studies were authorized. It would be unwise for Congress to postpone action on this legislation, for some crisis or other might face us in the future whereupon Congress might be forced to act without adequate information, and unwise legislation might result. We still have time to begin assembling the facts we will require for important future decisions, and I endorse the committee's plans to prepare the proper basis for some of them now.

There are four aspects of the bill that seem to me to be of particular importance. First, of course, is the prompt assembly and public dissemination of information. The public as well as the Government has a right to know this information. Much analysis and research will be generated in the private sector which will have the desired effect of acquainting the public with the reality of foreign investment in the United States. Accurate information can prevent unwarranted anxiety from developing and thus serves a useful purpose in itself.

Second, the broad coverage of the bill to include direct investments, real property, and securities is also of great importance. Much attention tends to be concentrated on direct investment, and properly so, because it involves the control of business decisions. Many people, however, are also concerned about foreign ownership of real property and securities and this concern can be put to rest with proper disclosure of all the facts.

Third, I was pleased to find in the bill the authorization to do some analysis of the trends of investment over time. Foreign investment of all kinds tend to follow some general trends, but also are frequently concentrated in time in reaction to specific and temporary factors. Naive projections of spurts of investment can lead to very misleading conclusions and thus need to be placed in proper perspective.

Fourth, the legislation vests the operating authority and responsibility in the Department of Commerce. The Commerce Department is where the expertise is, and should be, to examine private business developments. And let me add that it is not adequate to have the information spread around a dozen or so Government agencies. Concentrating the information in a single agency where analysis can be done is the way to get to the core of the facts.

While I cannot judge the adequacy of a budget for this activity, I would urge the Congress to fund the activity properly. To produce accurate and timely data requires resources even in this time of budget stringency.

There are a couple of small points that I missed in the bill, but may be implicit in it. For instance, I missed a directive to the Secretary of Commerce to follow usual rules to protect the confidentiality of business secrets. Obviously, names, kind, and amount of investments are firm specifics and confidentiality does not apply. These should be made public. However, if the Secretary obtains other information from foreign investors concerning modes of business behavior, then usual laws of confidentiality should apply. Indeed, this information should be made public, but not so that individual firm behavior might be recognized.

Also, purchases of American assets by foreigners need be reported but sales of such American-sited assets by foreigners to Americans are not covered. Obviously, if accurate net totals are to be maintained, sales as well as purchases need be recorded.

There are risks as well as benefits from any legislative action, even the gathering of information. In this case, a risk exists that affirmative action to gain data on foreign investment in the United States will be misinterpreted as a nationalistic or protectionistic act that will soon lead to controls on such investment. The Congress should be aware of such dangers and in its deliberations keep quite distinct the data-gathering function from policy decisions that might ultimately result. It should be obvious to any observer that the United States has a basic interest in maintaining freedom of international capital flows. However, all governments have a responsibility to exercise oversight to make sure private actions do not harm the interest of society as a whole. I do not believe foreign investment constitutes a threat to the United States, but I certainly want to know the extent of such invesment.

Some observers who, like myself, oppose controls on foreign investment, believe ignorance of the facts protects against such restrictive actions. Nothing could be further from the truth. Exaggerated fear of foreign penetration of American business that comes from ignorance of the facts is more likely to lead to restrictive actions than if the truth be known. I have basic faith in the wisdom of the American Government and the people if they are well informed and I hope that this bill will help in the educative process.

Thank you, Mr. Chairman.

Senator INOUYE. Thank you, Mr. Krause.

Your two points, the first on confidentiality of business secrets and the second, on including sales as well as purchases, are well taken. I am certain the subcommittee will be very pleased to incorporate those two thoughts.

What do you think about the recommendation by Mr. Eberle that we include a requirement for disclosure by domestic investors as well as foreign investors?

Mr. KRAUSE. Mr. Chairman, I am not against information on American owners of business, but one should be aware of the dimensions of the information process are expanded many-fold and that the interests are not exactly identical in the two sources of information. I would

think that it would not be unwise to gather information on foreign investors even though it ultimately be superseded by legislation that attempted to get information on all investors.

I think that there may be such difficulty in the massing of data and the mere data processing problems that you get into when you try to trace all investors and that a comprehensive approach might be better dealt with subsequently.

I, for one, would not recommend postponing action on this bill on the hope that an ultimate even more broader bill would be adopted.

Senator INOUYE. It has been suggested that the present laws provide sufficient protection. For example, Ambassador Eberle indicated that the DOD requires certain companies with which it deals to make certain disclosures about their foreign activities. Do you feel that present Federal laws are adequate to divulge the information that many of us are seeking?

Mr. KRAUSE. Mr. Chairman, I think that there's an important distinction to be made between information that's available within the U.S. Government and information that is available to the public. In the first place, even the availability of disclosable information not normally published is not made known to the public. Indeed, the virtue of this bill is that it concentrates the information in a single source that will be published regularly so that Americans will be getting the information and will know where to go for it if they seek it.

I was, in fact, educated myself this morning to find out that we were getting such information. I am a specialist in this field and did not know that there were sources, for instance, within some of the agencies in this regard. I think it's important that the information be made public.

Senator INOUYE. Thank you very much. Senator Metzenbaum?

Senator METZENBAUM. Mr. Krause, let me first say that I appreciate you finding time to testify today at some personal inconvenience because I know you are considered one of the leading authorities in the country on this subject.

When Mr. Eberle testified, he talked about periodic reports filed with the Commerce Department Bureau of Economic Analysis in connection with companies owning controlling interest, 25 percent or more of the voting securities of other companies.

Are you familiar with any existing procedures which would make it possible in the Department of Commerce to discover who owns such a 25-percent interest?

Mr. KRAUSE. You have periodic census of foreign investment in the United States that deals only with the direct investment. That's part of this bill, but not all of it.

Senator METZENBAUM. That has to do with the transfer of dollars, but not really with identifying the ownership.

Mr. KRAUSE. We do not know who the owners are.

Senator METZENBAUM. So that would mean nothing in this connection?

Mr. KRAUSE. Well, I would not characterize it as nothing. I think you do learn something when you know a particular industry has large concentration of foreign ownership, but you will get more information through this mechanism.

Senator METZENBAUM. I think that's all. Thank you very much.

Senator INOUYE. Thank you very much, sir. We appreciate your contribution this morning.

Senator METZENBAUM. Mr. Chairman, is Mr. Eberle going to be with us somewhat longer so that we might ask questions of him?

Senator INOUYE. No; I think he has left. I indicated to Mr. Eberle that we will be submitting to him questions in writing and he has assured us that he will respond to them.

Senator METZENBAUM. Thank you.

Senator INOUYE. Our next witness is Mr. James Needham, chairman of the New York Stock Exchange.

Mr. Needham, we are very pleased to have you with us. We appreciate your assistance this morning.

STATEMENT OF JAMES J. NEEDHAM, CHAIRMAN, NEW YORK STOCK EXCHANGE; ACCOMPANIED BY DONALD L. CALVIN, VICE PRESIDENT, GOVERNMENT AFFAIRS DEPARTMENT; AND DR. JEFFREY M. SCHAEFER, DIRECTOR, INTERNATIONAL FINANCE DIVISION

Mr. NEEDHAM. Thank you, Mr. Chairman. I am James J. Needham, and I am chairman of the New York Stock Exchange. With me today on my left is Donald L. Calvin, vice president of our government affairs department, and on my right, Jeffrey M. Schaefer, director of our international finance division.

Mr. Chairman, I think it is entirely appropriate for this subcommittee to consider this matter, because I view American industry as one of the weapons in America's arsenal for defense.

Before starting my testimony, I would like to for the record give the subcommittee staff a point of reference with respect to the question you addressed to Mr. Eberle as to what powers the administration had with respect to the developments you were referring to.

Under the emergency powers of the President, he has the right to close the stock exchanges, number one, a very severe step, but nevertheless he could do that.

And perhaps more significantly and more practicable is the power vested in the SEC and also in the New York Stock Exchange to suspend trading in any of the stocks that you see listed there.

So that if some secretive attempt were being made to acquire substantial portions of stock, we would detect it through our stock watch department. If, however, it was done on an orderly basis, the SEC would have residual authority to suspend trading.

So for all practical purposes, all public trading would come to a halt in every company listed on the exchange.

I just point that out for the record and suggest your staff review the appropriate sections of the Securities Exchange Act of 1934.

We appreciate the opportunity to appear before the Subcommittee on Foreign Commerce and Tourism to present the exchange's views on the proposed Foreign Investment Review Act of 1974—S. 3955.

In recognition of the increasing importance of international trade and finance in shaping worldwide economic development, the New York Stock Exchange established the advisory committee on international capital markets late in 1972. The advisory committee, which

is headed by John E. Leslie, chairman of Bache & Co., Inc., includes some of the most distinguished and knowledgeable individuals in the area of capital markets and international finance, as well as prominent men who have served the public at the highest levels of government.

Attached to my statement, in appendix A, is a list of the names and affiliations of the other members currently serving on the committee.

The exchange is and has been an ardent proponent of free capital flows across borders and of initiatives that will provide for greater internationalization of capital markets in the coming years. We have on many occasions gone on record in favor of stimulating the flow of capital among nations and have testified in favor of eliminating the IET and other U.S. restrictions on capital outflows.

The exchange board of directors has recently recommended adoption of policies designed to stimulate capital flows, such as elimination of the withholding tax on interest and dividend income received from U.S. securities by foreigners. In addition, we have endorsed the concept of allowing foreign broker-dealers access to the U.S. securities markets under appropriate conditions.

The committee's attention is primarily focused on ways to encourage the free movement of capital flows across national borders. The New York Stock Exchange believes the unhampered flow of both direct and portfolio investment into the United States has been advantageous to this country, both for its favorable impact on the U.S. balance of payments and for the support it has provided for U.S. investment abroad.

Moreover, we believe that the steadily increasing interdependence of nations in the areas of trade, investment and finance warrant a national commitment to a policy of free capital flows to the greatest possible degree.

Therefore, we urge that every effort be made—including explicit reference in the act itself—to clearly inform foreign investors that the act's purpose is neither to restrain nor to deter foreign investment. Rather, it behooves the drafters of this bill to convey convincingly its true purpose and rationale as an attempt to gather needed information on the sources of ownership.

Indeed the SEC's recent announcement of its intent to seek information on the sources and identities of corporate takeovers regardless of nationality reveals that the issue involves domestic as well as foreign companies. This is in addition to the detailed information and reports that are required when takeovers are involved.

Because of my concern, Mr. Chairman, about the reaction of our friends abroad, I have advised Senator Metzenbaum that the committee should consider consulting with the EEC and OECD and among others, the Japanese Minister of Finance.

I, on the other hand, have placed this matter on the agenda of the International Federation of Stock Exchanges, which is meeting in Madrid in early October, of which I am the vice president.

In addition to that, I have personally written to the heads of all the major stock exchanges of the world advising them of this committee's deliberations, and assuring them that this bill is not intended to be, at least on the part of the New York Stock Exchange, a shift in policy in terms of our encouragement of the free flow of capital among nations.

In accordance with these views, the New York Stock Exchange supports the collection of data and disclosure of foreign investment as proposed in the Foreign Investment Review Act of 1974.

We are very mindful that this bill and the recently passed Foreign Investment Study Act, which has authorized $3 million for the Commerce and Treasury Departments to study the origin and extent of foreign direct and portfolio investments in this country, is the outgrowth of national concern over the recent increase in foreign takeovers, both attempted and actual.

International investors, including European and Japanese multinational groups, have recently taken advantage of the simultaneous existence of two domestic economic factors—the weak U.S. dollar last year and the unduly depressed price of most U.S. equities. Foreigners naturally took notice of this favorable situation to acquire U.S. companies for substantially smaller sums of their own currencies than was heretofore possible.

Furthermore, since last year the enormous revenues accruing to the oil-producing nations as a result of the quadrupling of oil prices has quite logically focused attention on the potential channeling of these sums into purchases of U.S. assets.

No one can deny that the quadrupling of oil prices is and will bring a redistribution of wealth and income from the industrialized world to the oil-producing nations. It should be kept in mind in this connection that the vast bulk of their surplus foreign currency holdings will be government controlled. This means that the investment outlets which they may seek are somewhat different than if the funds were accumulated solely in private hands, as is the case with Japanese and European investors.

While we recognize that possible adverse reaction to foreign investment in some quarters has been and may continue to be forthcoming, we cannot overemphasize the need to convey to foreigners that the proposed act is not intended to—in Senator Metzenbaum's words—"restrict foreign investment, nor to threaten potential investors." We are convinced that the need to convey this intent to foreigners is of such paramount importance that, as previously noted, words to this effect should be included in the act itself at the outset. We deem this vital in order to prevent foreign misconceptions, which might discourage the flow of investment capital to this country and even cast suspicion on the enormous U.S. investments abroad.

For years, U.S. official and private sources have maintained that investment abroad has been instrumental in the reconstruction of the European economy as well as stimulating the growth of the developing nations. We can think of few other economic factors that have been as crucial to upgrading the world's standard of living as investments abroad by U.S. corporations.

Given the far greater amount of U.S. investment abroad than foreign direct investment in this country, concern over foreign investment in this country seems premature. A quick glance at the statistics involving investment flows reveals the extent of this imbalance. According to the Commerce Department's latest estimates, the total book value of foreign investment in the United States increased steadily over the past decade from $7.6 billion in 1962 to $17.7 billion in 1973.

Nevertheless, U.S. foreign direct investment has been far greater, increasing from a book value of $37.2 billion in 1962 to $107.3 billion in 1973. Thus, U.S. direct investment abroad is about six times greater than foreign investment in this country.

This country faces an acute capital shortage in the next decade. We can think of no more important reason for undertaking policies that will encourage, rather than discourage, foreign investment.

As I stated in an address to the Economic Club of Detroit earlier this month, exchange economists foresee a potential $650 billion capital shortfall between now and 1985. We estimate the saving potential in the U.S. economy through 1985—from all domestic sources—at something over $4 trillion. Over the same period, capital demands are likely to reach a cumulative total of around $4.7 trillion.

The capital shortfall, averaging just under $54 billion a year over the 1974–85 period, represents approximately 13 percent of the average demand for funds over the period. This capital shortage will have a particularly severe impact on domestic business activity, on the position of the United States in international economic affairs, and, ultimately, on the standard of living and quality of life in America. One of the ways to help to overcome this capital gap is to stimulate foreign investment. In an era of capital scarcities, the welcoming of foreign investment is consistent with our national interest.

The wisdom of our founding fathers has been proven time and again. The first Secretary of the Treasury, Alexander Hamilton, in reporting to the First Congress in 1791, spoke of foreign investment in this light:

> Rather than be judged a rival, it ought to be considered an auxiliary all the more precious because it alone permits an increased amount of productive labor and useful enterprise to be set to work.

With a relatively few exceptions, the United States has not discriminated between investment by foreign and domestic sources. The foreign investment community is aware of and presumably understands the need for existing restrictions on foreign investments in certain sensitive areas of our economy. These areas include communications, transportation, atomic energy, and foreign acquisition of public lands. Various legal barriers to foreign investment also apply under the antitrust provisions of the Sherman, Clayton, and Robinson-Patman Acts. An outline of these restrictions is provided in appendix B. At a time when balance of payments and capital shortage consideration are of great importance, the existing restrictions would seem to be sufficient to safeguard our vital interests.

We share Congress' awareness of the limited information on foreign investment into this country. The Foreign Investment Study Act of 1974 should do much to fill in this gap. It might interest this subcommittee to learn that the New York Stock Exchange has recently developed a data bank designed to monitor the foreign activities of our member firm community. A report summarizing the data collected for the first quarter of 1974 was well received. Although still in its early stages, the data bank has provided much useful information to supplement the available Government statistics on foreign portfolio investment. We are continuing our efforts in this area by constantly

updating the statistics and expanding the output. The staffs of the various interested governmental agencies and departments have been kept informed of our efforts and progress.

We have several recommendations for modifying different provisions of the bill that we believe are absolutely necessary if the twin goals of increasing disclosure but also continuing encouragement to foreign investment are to be achieved.

First and most important, we believe that the specific reporting requirements spelled out in section 3 should be deleted at this time, with authority given to the Commerce Department to establish the specific reporting requirements after further study, notice, and public hearings.

The percentage requirements of foreign ownership for filing and reporting—5 percent for a single investor and 10 percent for two or more investors from the same country—create problems with regard to effective monitoring.

For example, if a single foreign investor intends to acquire 5 percent of a listed U.S. company and wants to avoid the reporting requirements as provided for in the bill, he could conceivably acquire one percent through separate accounts with five different brokerage firms, all of which hold the securities in street or nominee name. Alternatively, the foreign investor might do this even in the normal course of business to compensate for research services by various firms without intending to evade the law. In either case, the proposed act does not address itself to these or similar situations.

Moreover, if, for example, five different foreign investors from the same country each acquired 2 percent of a U.S. company's stock—thereby technically subjecting such acquisition to the reporting requirements—they may well be unaware of the collective 10 percent ownership if the stock were held in street or nominee name and therefore unknown to the purchaser.

Since the effectiveness of monitoring is open to question under current provisions of the bill, we recommend that further time be devoted to study of this subject before final decisions as to which class of foreign investors should be subject to certain filing provisions. Under the provisions of the Foreign Investment Study Act, the Departments of Commerce and Treasury are authorized to conduct a survey of direct and portfolio investment, respectively. The results of these studies should provide appropriate guidelines, which we feel are lacking at this stage.

We, therefore, suggest that the Commerce Department be granted authority, as part of the provisions in the proposed act, to determine the appropriate guidelines applicable to foreign investor reporting after the results of the studies authorized by the Foreign Investment Study Act are available. This would permit interested parties to comment on the guidelines as may be proposed by the Department of Commerce, and, if appropriate, the findings be subject to hearings and possibly congressional action.

Other parts of the proposed act strike us as requiring modification.

With respect to the definition of foreign investment as referred to

in section 2(1), we feel that the inclusion under this term, of property "owned or controlled, wholly or substantially by individuals who are residents of the United States," may be broader than intended.

Under this definition, a foreign national would have to file the required reports and maintain the necessary records if he acquires 5 percent or more of a company, incorporated in his own country, which is controlled by U.S. interests. We do not believe that the scope of the bill was intended to be that broad, as it would impose unnecessary technical problems while not conferring any real benefit to this country.

We therefore propose that the definition of "foreign investment" be amended to preclude the likely occurrence of a situation just referred to.

Certain subsections of section 3 as presently drafted would impose obligations on other persons with respect to filing of reports and maintenance of records if the foreign investor does not do so himself.

Specifically, section 3(a)(1):

> * * * require(s) the maintenance of records and the submission of reports by foreign investors and by such other persons as the Secretary determines to be appropriate * * *.

The phrase, "such other persons" may require broker-dealers, issuers, or transfer agents to file reports and maintain records if the foreign investor fails to do so.

Under section 3(a)(2) a broker-dealer would be required to ascertain the information required thereunder for purposes of the reporting obligations and—under section 3(a)(3)—file it within 10 days, absent the foreign investor's doing so. This raises the important question of who is to assume the substantial administrative burdens and costs of compliance.

Moreover, the short 10-day filing period allowed subsequent to a foreign acquisition may make it impossible for a broker to obtain the required information in the absence of foreign investor compliance.

We wish to emphasize that further clarification of brokers' responsibilities and obligations in this regard is absolutely necessary. This is especially urgent in light of possible broker liability for penalties under section 5 of the bill.

With regard to section 5, we wish to raise questions as to certain existing provisions which we feel are inimical to the best interests of the country in its furtherance of international harmony and which place undue burdens on broker-dealers.

Section 5(a) imposes a civil penalty of up to $5,000 for each failure to comply with requirements of the act. As presently drafted, this section might penalize foreign investors or brokers who are unaware of the reporting requirements; or if aware, who do not have knowledge that the acquisition exceeds the stipulated percentage holdings which make filing and reporting mandatory. To avoid imposition of penalities in cases of lack of knowledge, we strongly urge that the word "willfully" be inserted here.

We also favor limiting the penalty for willful failure to comply with the filing and reporting requirements to economic sanctions—thus eliminating the prison penalty—in the best interests of further-

ing international investment activity and of avoiding unnecessary apprehension in other countries.

We thus favor merging sections 5 (a) and (b), to eliminate economic sanctions where failure to comply is unintentional, and to limit the economic sanctions to fines where failure to comply is found willful.

We also believe that some of the penalty provisions for noncompliance as currently described in section 5 (c) should be modified. That section discusses other penalties which the Secretary of Commerce has the option of imposing in the event of noncompliance. We are specifically referring to that part of the section which enables the Secretary to "appoint a trustee or receiver of, or make other arrangements with respect to, the business concern or property."

This particular phrasing smacks of the possibility of expropriation if foreigners do not comply with the reporting requirements. We understand that this is clearly not intended by the drafters of the legislation; if so, we urge that this section be redrafted or deleted from the bill.

In conclusion, the New York Stock Exchange supports the collection of data and disclosure regarding foreign investment as proposed in the Foreign Investment Review Act of 1974. We believe that our concern about the lack of information on foreign activity is evident by the creation of a data bank on foreign portfolio investment earlier this year at the exchange. However, we believe that certain modifications in the act are necessary to increase its effectiveness and insure equity to all the concerned parties.

We believe that it is premature to incorporate specific reporting requirements into the proposed Act prior to evaluating the findings of the studies authorized under the Foreign Investment Study Act. We urge a flexible approach with respect to drafting the reporting requirements and modifying the penalties for noncompliance.

This flexibility will also allow the foreign and domestic investment community sufficient opportunity to provide ideas and input on how to achieve both greater foreign disclosure and investment.

As we all know, events change rapidly in the international area. As an example, net foreign purchases of U.S. stock by foreigners reached an alltime high of $2.8 billion in 1973. Through the first half of 1974, such purchases decreased and were under $400 million. The foreign interest in U.S. corporate equities has clearly fallen dramatically as compared to last year.

By resisting the temptation to set specific standards for reporting requirements at this time, we can more properly assure a better comprehension of the act's purpose on the part of foreign investors. At the same time, the Treasury and Commerce Departments will be in a better position to evaluate the results of their studies. After such work is completed, appropriate guidelines can emerge.

Senator INOUYE. Thank you very much, Mr. Needham.

Mr. Needham, are there any other countries with laws similar to that provided for in S. 3955?

Mr. NEEDHAM. With your permission, Mr. Chairman, I will ask Dr. Schaefer to respond to that. He heads our Department of International Capital.

Senator INOUYE. Fine.

Dr. SCHAEFER. Yes, there are many other countries with reporting requirements which, if not exactly equal to those in the proposed act, are very similar.

We know, for example, that Canada has recently cracked down on foreign investment in that country, there is an increasing concern about it, and they have required much more information as well as approval by a foreign investment review board before they authorize certain foreign investments in that country.

Senator INOUYE. Do you believe that foreign investment in the United States will have a destabilizing effect on capital markets, particularly if they were concentrated in short- or medium term Government securities?

Mr. NEEDHAM. In small or——

Senator INOUYE. Medium term Government securities.

Mr. NEEDHAM. Perhaps I should disqualify myself, because I am not an economist. But I doubt very seriously that that would occur. I think what would happen, Senator, is that the market for those securities would have greater depth and more liquidity and that would be beneficial to everyone who owns those securities—most of them owned by Americans.

Senator INOUYE. In your testimony you mentioned the Exchange's data bank. Is that information available to Federal Government agencies and to the public?

Mr. NEEDHAM. I will let Dr. Schaefer answer that. He handles that. With your permission, of course, Mr. Chairman.

Dr. SCHAEFER. The answer to that is "yes." In New York both the New York Times and the Wall Street Journal carried the main findings of that data bank. In addition we have made efforts to notify various Government agencies who might be interested in the subject that this information is available.

Particularly, I am talking about the Federal Reserve as well as the Treasury Department, State Department, et cetera. And anybody from the public who calls us about this is sent copies.

Senator INOUYE. How does your data compare with the Government data in terms of comprehensiveness and accuracy?

Dr. SCHAEFER. Our data specifically addresses itself to portfolio investment. In some ways it is more complete; in some ways it is less complete because we can only have the member firm community of the New York Stock Exchange report to us. We can not require reporting by non-member broker-dealers, or by the banks.

However, for our member firms who handle the bulk of foreign portfolio investment in this country through their offices, the data is somewhat more detailed.

It reports particularly their commission revenues from foreign business, and one thing better it does, it breaks out foreign purchases by primary or secondary markets, so we can get some indication whether foreigners are buying new issues versus secondary issues on the stock exchange. We think that information is very useful.

Senator INOUYE. The subcommittee would like to have a very brief recess. Senator Metzenbaum will be back shortly. I have my last call for a vote.

[Recess.]

Senator METZENBAUM [presiding]. The subcommittee will come to order.

I apologize to you, Mr. Needham, for not being present for all of your testimony, but I want to say to you first that I appreciate your personal interest in this subject and your giving us the benefit of your thoughts on it.

I also want to express my appreciation to members of your staff who have been particularly helpful with us in ascertaining the necessary information to draft the legislation, as well in as opening our eyes to certain possible problems.

In reading your statement, I think that many of the points you make have great validity.

Certainly, we do not intend to penalize brokers who unintentionally err and if the time limit is too short, there is no problem about correcting that provision.

The suggestion you make with respect to emphasizing our intention not to restrict foreign investment in this legislation can, I think, be taken care of with appropriate additional earnings.

In fact, as I read through your comments, I didn't see anything which actually gave me any cause for major concern that the legislation could not be adjusted to accommodate these problems you raise.

Mr. NEEDHAM. I am pleased to hear that, sir.

Senator METZENBAUM. I did want to ask you a question in connection with the data bank. How does this data bank on accumulation of foreign investment in this country deal with the problem of nominee ownership? Are you able to get behind it at all?

Mr. NEEDHAM. May I allow Dr. Schaefer to answer that question, Senator?

Senator METZENBAUM. He gets the tough questions. Is that it?

Mr. NEEDHAM. Yes, and I get all of the money.

Dr. SCHAEFER. Senator, we are not any more successful in going behind the nominee accounts than anybody else. At this point we have been content to just monitor the activities of foreigners on a country-by-country basis, and our interest at least has not been focused on going any further than that at this point in time.

Mr. NEEDHAM. Senator, Dr. Schaefer is our expert, he heads up our Department, as you know, and that is the reason I deferred that question to him.

Senator METZENBAUM. He is the person who has been particularly helpful to us during this entire period.

Mr. NEEDHAM. I am sure he is delighted to have that in the record.

Senator METZENBAUM. Senator Inouye may have some additional questions for you, Mr. Needham, when he returns; perhaps he would like to ask them.

As for myself, I am pleased that the New York Stock Exchange has seen fit to generally support the legislation we have introduced. With some modifications I hope we can pass the act in this session of Congress. And I am certain we are going to remain in close touch with you as this matter proceeds forward. We think there is a sense of urgency.

One of the witnesses who, I understand, will testify suggests that we are overly concerned, that there won't be that much foreign invest-

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ment, that we are exacerbating the situation, blowing it up out of all proportion to the realities of the problem.

Would you care to comment on that?

Mr. NEEDHAM. Senator, I have been accused of that in connection with certain other legislation on the Hill myself, of being overly concerned, and the way we have worked that out is to build into proposed legislation—the securities industry that is—we have built into the legislation what we refer to as a fail-safe mechanism.

I view this as nothing more than a fail-safe mechanism. If we find that the persons who are concerned are right, we haven't lost anything, we haven't hurt anyone, if we go about it in the right way, and at the same time we have created a wealth of information which a lot of people will feel is useful.

So I don't think that is a relevant point.

Senator METZENBAUM. Would you care to comment on the impact that concentration of equity securities in a particular country would have all that country decide to dump the entire amount on the market? What effect would that have on that company's shares, and on the market generally?

Mr. NEEDHAM. Well, we have experience with dumping by foreign countries already in other areas, and there is legislation to deal with that.

With specific reference to the securities industry, we don't have a dumping problem as such, but we do have some problems when large institutional holders dispose of large portions of their portfolio in a particular security. That does cause a severe volatility in the price swings.

I would suspect that if any large foreign holder of securities did what an American holder of securities did, the same result would occur.

Senator METZENBAUM. Thank you very much.

Mr. NEEDHAM. You are welcome.

Senator METZENBAUM. I think our next witness is Jacob Clayman, speaking for the secretary-treasurer of the Industrial Union Department of the AFL–CIO.

Senator INOUYE [presiding]. Before proceeding, I would like to thank Mr. Needham for his contribution.

Mr. NEEDHAM. Thank you. It was an honor to be here.

[The appendixes follow:]

APPENDIX A

ADVISORY COMMITTEE ON INTERNATIONAL CAPITAL MARKETS

MEMBERS

John E. Leslie
Bache & Co. Inc.
Committee Chairman
Harry B. Anderson
Merrill Lynch International Inc.
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Andre Meyer
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Shields Model Roland Inc.
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Morgan Stanley & Co. Inc.
Robert A. Powers
Smith, Barney & Co. Inc.
Robert V. Roosa
Brown Brothers Harriman & Co.

APPENDIX B

Restrictions on Foreign Investment into the United States

"In the United States, the qualifying, regulation and/or restriction of foreign companies and/or capital lie mainly within the jurisdiction of the 50 individual states. At the national level, foreign investors in the United States generally enjoy the same freedom as domestic investors. However, certain federal restrictions are applied to specific sectors of the economy because of national defense, natural resources or special trust considerations.

For each of the following listings, three subsections are provided:

A—Cites and summarizes are relevant federal statute.

B—Mentions the activity of the responsible federal agency(ies).

C—Provides, where available, additional comments on the effects and limitations of the provision.

COMMUNICATIONS

A. The opportunity for foreign-owned enterprises to invest in the communications field (telephone, telegraph, radio and/or television) is sharply limited by a 1927 federal statute last amended in 1934, which prohibits foreign-owned or controlled corporations from receiving a license to operate an instrument for the transmission of communications. A corporation is considered foreign owned if any director or officer is an alien, or if more than one-fifth of its capital stock is owned by aliens, a foreign government or a corporation organized under the laws of a foreign country. A corporation is generally considered foreign-controlled for purposes of this statute if it is directly or indirectly controlled by a corporation, at least one-fourth of whose capital stock is owned by foreign interests.

(Source: Title 47, U.S. Code Section 310 (1970)).

B. All license applications are processed by the Federal Communications Commission.

C. At the time that an application for a license is filed with the FCC, the applicant must answer questions regarding the nationality of a corporation's owners, directors and officers. While there are many examples of corporations which have a foreign ownership of up to the 20% limit; e.g. a number of stations in Southern California and WPAT in Patterson, N.J., which is 20% owned by a Mexican national, there have been no known instances in which the limitations have been exceeded.

Of course, the law in no way constitutes a restriction to foreign interests in the manufacturing of items meeting FCC specifications such as radios, TVs, telephones, etc.

TRANSPORTATION

I. Aviation

A. Foreign direct investment in the United States for the purpose of aircraft operation is also restricted. Eligibility to register aircraft in the United States is limited to:

(1) individual American citizens;

(2) partnerships in which all partners are American citizens;

(3) corporations formed in United States in which at least two-thirds of the directors are American citizens *and* at least 75 percent of the stock is owned by American citizens.

Furthermore, the right to engage in cabotage (trade or transport between two points within the U.S.) is limited to domestically registered aircraft.

Under certain circumstances, however, foreign register aircraft may operate within the United States when the country of registration affords reciprocal privileges to aircraft registered in the United States. In these cases, a special permit must be obtained from the Civil Aeronautics Board. However, the foreign aircraft may not pick up persons, property, or mail within the United States to be transported to a destination within the United States.

Source: Title 49, U.S. Code Section 1378 and 1401 (1970) Transportation.

B. The Civil Aeronautics Board handles the acquisition of "economic certificates" and "certificates of convenience and necessity," i.e. licenses to carry on economic activity.

The Federal Aviation Administration (DOT) is responsible for aircraft safety and registration.

C. There are two categories of air-freight forwarder licenses issued by the CAB-foreign air carrier and domestic air carrier. The right to carry on cabotage is the primary difference. It should be noted, however, that the cabotage restriction does not extend to goods or passengers whose points of origin or final destination is in another country.

Neither the CAB nor the FAA is aware of any exceptions to the stipulated limitations. In a recent case (*Inter-American Air Freight Corp.* v. *CAB*), a California corporation owned by German nationals was denied a domestic license but was granted a license as a foreign air carrier.

Answers to nationality questions on license and registration applications are assumed to be accurate, as alleged, unless there is evidence to the contrary. There are no records kept as to the degree of foreign ownership in corporations, but the degree of foreign ownership of domestic air companies is believed to be quite low.

Tangentially, the CAB generally also insists that foreign air carriers operating in the U.S. be owned and controlled by nationals of the country of registration. The only exception is that during World War II, concern that Germans would acquire interests in Latin American airlines led to the granting of permission for U.S. corporations to buy into Latin American air carrier corporations which could operate within the United States. Substantial holdings in several Latin American airlines are still owned by some American firms.

II. Coastal and fresh water shipping

A. A second type of transportation activity restricted to United States citizens is coastal and fresh water shipping. Under the Jones Act of 1920, any shipping of freight or passengers between points in the United States or its territories must be done in vessels which were built and are registered in the United States and which are owned by United States citizens. This prohibition applies even when goods are shipped via a foreign port, and are thereby temporarily removed from U.S. waters. A vessel which is at any time registered in a foreign country permanently loses the U.S. shipping rights. Furthermore, any eligible vessel exceeding five hundred gross tons which is later rebuilt outside the United States is likewise restricted.

For vessels registered in foreign countries which grant reciprocal privileges to American vessels, a statutory exception permits intercoastal transportation of empty items, such as cargo vans, shipping tanks, barges, and the equipment used with them.

Like the aviation regulations, for a corporation to register a ship in the United States, the corporation's principal officers must be American citizens and 75% of the stock must be owned by citizens of the U.S.

The purpose of the cabotage restriction is to protect the American shipping industry, to provide employment for America's shipyard workers, and to improve and enhance the American Merchant Marine. More broadly, Congress hoped to assure that facilities in domestic shipyards would be adequate in times of war.

Source: Volume 46, U.S. Code, Section 883, 1970 (Shipping).

B. Enforcement of the cabotage laws falls under the jurisdiction of the U.S. Coast Guard (now DOT).

The U.S. Customs Service is the enforcing and licensing agency.

The Federal Maritime Commission is responsible for insurance, underwriting and subsidies.

C. The domestic unions and shipping companies are very effective watchdogs of the cabotage regulations. However, one example of a small number of specific exceptions is that of a Swedish built, American registered vessel which was allowed to carry on Seattle-Alaska trade, only after being legalized by an act of Congress passed for that vessel alone.

NATURAL RESOURCES

I. Land

A. The law restricting alien ownership of public lands dates from an 1887 law which states that public land may be transferred or leased only to a) U.S. citzens or to persons having declared their intentions to become U.S. citizens, b) a partnership or an association, each of the member of which is a citizen of the U.S. or has declared an intention to become a citizen, and c) a corporation organized under the laws of the United States.

There is no limitation upon the percentage of foreign ownership which a domestically incorporated firm may have, provided that the country whose citi-

zens own shares of the U.S. corporation grants reciprocal privilege to U.S. citizens. Where reciprocation is not extended, however, any such American corporation must be majority owned by U.S. citizens.

Source: Volume 48, U.S. Code Section 1501–1508 (1970) Territories Volume 43, U.S. Code Section 682 (1970) Public Lands.

B. The Bureau of Land Management, Department of the Interior, is responsible for administering the law and for the transfer or lease of all public lands.

C. There may be some examples where public land is leased to American corporations which themselves are heavily foreign owned but, there are no known exceptions to the general rule.

The fact that this rule constitutes very little constraint to foreign business ventures lies largely in the fact that most of the land in which the corporations are inerested in private land. Once the public land has been transferred to the private sector, the Bureau of Land Management is no longer concerned. All private land falls under the jurisdiction of the 50 separate states.

II. Mining on Federal lands

A. The Promotion of Mining Act of 1920, derived from an earlier act of 1872, states that valuable mineral deposits in lands belonging to the United States are open to exploration and leasing only to citizens of the United States and those who have declared their intentions to become citizens. However, in that land can be leased by any corporation organized under the laws of the United States, aliens may acquire leases or permits by owning a controlling interest in such a corporation, provided that their country grants reciprocal privileges to U.S. citizens. If, on the other hand, an alien's country does not grant similar privileges, then his ownership of any "appreciable amount of a corporation's stock will prevent that corporation from receiving a mineral lease or permit."

Source: Volume 30, U.S. Code Sections 22, 24, 71, 181, 352 (1970) Mineral Lands and Mining. Volume 43, U.S. Code Sections 3102–3300, (Public Lands).

B. The Division of Energy and Resources, Department of the Interior, is the responsible agency.

C. Technically, the exploitation of mineral rights on federal lands is further broken down. The 1920 act covers such on-shore resources as gas, oil, coal, oil shale, phosphates and sulphur. Other than the mentioned citizenship requirements, leasing of such land is subject only to the payment of royalties. Similar provisions extend to the use of public grazing land which is administered by the Bureau of Land Management.

Under the Outer Continental Shelf Act of 1953 which, up to now, concerns leases only on oil, gas and sulphur, there is *no* stipulation about who can hold leases, but practice has limited rights to U.S. citizens and domestically incorporated corporations. Again, up to 100% foreign ownership is permitted but there is no provision making reciprocation mandatory. The same provisions apply to the new Geothermal Steam Act.

Ownership (as differentiated from leasing) of public domain land may still be acquired by anyone (citizen or alien) who files for a patent and proves the discovery of valuable mineral deposits on that land. One proposal of the Mineral Leasing Act of 1973 (pending in Congress) would eliminate acquision of ownership for everyone and make all such lands only leasable.

III. Hydroelectric power

A. According to legislation passed in 1920-hydroelectric power sites on navigable streams in the United States may be developed only by United States citizens, associations of U.S. citizens, or domestically organized corporations.

The term "navigable streams" is extended to include tributaries affecting navigable stream or streams on or affecting public lands.

Source: Volume 16, U.S. Code, Section 797e (1970) Power.

B. The Federal Power Commission is responsible for issuing licenses to eligible parties.

C. There is no limitation upon the degree of foreign control or ownership of domestic corporations, but the FPC knows of no example of significant foreign ownership in a hydroelectric power operation.

IV. Atomic energy

A. In order to prevent potentially harmful effects to the defense, security or health and safety of the public, no licenses for the operation of atomic energy

utilization or production facilities may be issued to aliens or to foreign owned or foreign controlled corporations.

Source: Volume 42, U.S. Code Section 2133 (1970) Public Health & Welfare.

B. The Atomic Energy Commission has complete responsibility for this act.

C. "Utilization facility" normally means a reactor while "production facility" normally means reprocessing plants.

The AEC's jurisdiction extends to such areas as fabrication of fuel elements, uranium milling and mining, and activities involving radioactive isotopes. However, there are no specific restrictions against alien ownership or control of such facilities. Thus, investment and activity in these sectors is permitted unless it is found "inimical to the nation's welfare."

In defining foreign ownership or control of utilization and production facilities, there are no general rules such as allowable percentages of ownership. Licensing is based on the merits of individual cases.

Vol. 3 of AEC Reports mentions a case (SEFOR reactor or GE and Southwest Atomic Energy Associates) in which a German corporation put up about 50% of the funds for the construction of a demonstration reactor facility in Arkansas. No stock interest was involved. The AEC decision was that the applicant was not owned or controlled by a foreign-owned corporation.

Recently (1972 or 73) the AEC approved the transfer or a license for a utilization facility from Gulf Corporation to a 50%–50% Gulf-Royal Dutch Shell partnership because there was found to be no foreign control or domination which would be inimical to the welfare of the United States.

BANKING

A. Only banks incorporated within the United States may become members of the Federal Reserve System and/or the Federal Deposit Insurance Corporation. (However, consideration is being given to allowing foreign branches to become members of FDIC.) There is, however, no limitation to the percentage of a bank which may be foreign owned.

Source: Volume 12, U.S. Code Section 321 (1970) Banking.

B. The Federal Reserve System is the regulatory agency of the banking system. The Federal Deposit Insurance Corporation insures depositors against bank defaults.

C. Any foreign person or corporation establishing a subsidiary or acquiring control (25% or more) of a domestic bank must be approved by the Federal Reserve's Board of Governors.

Some examples of recently established subsidiaries approved by the Board are:

(1) Sanwa Bank of California, subsidiary of Sanwa Bank, Ltd. (Osaka).

(2) Mitsubishi Bank of California, subsidiary of Mitsubishi Bank of Tokyo.

(3) First Pacific Bank of Chicago, subsidiary of Dai-ichi Kangyo (Tokyo).

(4) Banco de Roma of Chicago, subsidiary of Banco de Roma.

One example of a recent acquisition is first Western bank of Los Angeles acquired by Lloyds Bank, Ltd. (London).

GOVERNMENT CONTRACTING

Besides the procedures and requirements of normal government contracting, for the most part, the Federal Government does not distinguish between contractors operating within the United States on the basis of domestic or foreign ownership. Perhaps the most difficult problem for a contractor controlled by foreign interests is that of securing security clearances, which is required for many contracts involving access to or development of classified information. Both "facility clearances" and "individual clearances" for key management personnel may be necessary. For corporations, clearances must be obtained for all principal officers and chairman of the board plus others who may have access to classified information. In that most foreign nationals are ineligible for clearance, this provision may pose a substantial problem unless all personnel requiring clearance are U.S. citizens.

Notwithstanding the contrary appearances, these rules need not be insuperable barriers to foreign interests wishing to invest in concerns contracting with the United States Government. First, it must be remembered that many contracts do not involve classified information. Moreover, where classified data does bring the

security clearance requirements into play, arrangements can be made by which the foreign interests retain the right to profits but relinquish control and direction of the enterprise.

One arrangement employed for this purpose is the "voting trust." In this trust, a single trustee or a board of trustees is established to direct the business; the trustees are American citizens eligible for security clearances. Foreign interests are entitled to all the profits but have no say in management and have no access to classified data.

The Buy American Act of 1933 adopts the general policy that only items mined, manufactured or produced in the United States can be acquired by the government for public use. Nevertheless, if the foreign-owned enterprise domestically produces the product it sells to the Federal Government or if such items contain at least 50% United States products by value, the Buy American Act is inapplicable.

Sources: Volume 41, U.S. Code Subsection 10(a-d), (1970), and Industrial Security Manual for Safeguarding Classified Information (DOD manual, 5220.2, April, 1970).

In addition to the limitations on specific industries and services, general restrictions on foreign investment are in force which apply to all sectors of the U.S. economy. For example, under the Trading with the Enemy Act, the President is authorized to control or prohibit any foreign transaction during a time of war or declared national emergency.

Under the Export Administration Act of 1969, the President is authorized to prohibit or curtail exports from the United States to the extent necessary to further the foreign policy of the U.S. Consequently, under the Act, U.S. subsidiaries of foreign corporations would be affected in their export capabilities.

Moreover, the Act also authorizes the imposition of export controls for reasons of national security or in situations where it is deemed necessary to protect the economy from excessive shortages and to reduce the inflationary tendencies arising from the demand induced by the excessive shortages.

Senator INOUYE. Welcome to the subcommittee, sir.

STATEMENT OF JACOB CLAYMAN, EXECUTIVE DIRECTOR, INDUSTRIAL UNION DEPARTMENT, AFL-CIO, WASHINGTON, D.C.

Mr. CLAYMAN. Thank you, sir. Mr. Chairman and Senator Metzenbaum: First, I want to congratulate both of you gentlemen for sponsoring this legislation. Obviously our presence indicates our approval.

I am pleased to believe that this bill represents a growing sensitivity on the part of the Senate generally and the Congress generally to foreign investments in this country and perhaps equally important and indeed perhaps even more important in the short and the long run, American corporate investments abroad.

But I am not here to talk about that latter subject today. I want to start my testimony.

Thank you for this opportunity to appear before this committee today to speak in support of S. 3955, the Foreign Investment Review Act of 1974.

As we understand it, this bill would establish a formal mechanism within the Department of Commerce for disclosure and continuing review and analysis of foreign investment in the United States whenever that investment results in a substantial degree of control of U.S. companies by non-U.S. citizens.

The immediate incentive for this bill, as Senator Metzenbaum has indicated, is the tremendous concentration of wealth by the oil-producing countries, a concentration which results from the quadrupling in the price of oil over the past year. Serious as this concentration is, it

only reinforces the trend which has concerned us in the IUD for some time, and that is the increasing growth and strength of the multinational corporations owing allegience to no country and therefore able to subvert national policies of both host and parent countries.

Taken together—the accumulation of enormous amounts of petrodollars in oil producing countries, plus the already existing shift to transnational corporation organization—we are concerned that the potential for irresponsible and unresponsive control of U.S. business and industry has been vastly increased. The situation could easily get out of hand.

By "unresponsive ownership" I mean ownership and direction of industry which is beyond the pale of national program and policy, not subject to national or international regulation. Not only is there a potential for evasion of social and economic responsibility, but also for contravention of national political goals and a disruption of international peace and prosperity.

The increase in foreign investment in the United States presents this country with the same kind of problem that other countries have been facing for the past 10 years, as U.S. based multinational companies have increased their overseas investment, established subsidiary operations within their borders or acquired controlling interest in local companies.

Both developed and underdeveloped nations which have experienced large increase in U.S. investment abroad have reacted with understandable concern that these companies could or would have an adverse influence on their own domestic social and economic goals, or even on political stability. And I suspect there are some cases we could cite together.

In many cases these nations have adopted laws or regulations designed to counteract such influences. These controls range from disclosure laws to regulations on foreign ownership, or capital investment, marketing requirements, etcetera. As we look at the trend of foreign investment in the United States over the past 2 years, we believe it is time for this country to take the same kind of precautions. The provisions for disclosure included in this legislation obviously is the first necessary and indeed imperative precaution.

In 1971, foreign investment in the United States amounted to only $115 million. Last year, 1973, partly as a result of the depreciation of the U.S. dollar, foreign investment increased more than twentyfold, to $2.5 billion. In the first 3 months of this year, investment increased by another $1.1 billion, or a 75 percent increase over the rate of investment the previous year. As petrodollars are accumulated by the oil-producing countries, we can expect this amount to increase even more in the coming months.

There is a pretty good indication of just how high this investment could go. As of the present time, we are seeing in our balance-of-payments account a tremendous outflow of money from U.S. banks to foreign countries. This outflow amounted to $8 billion in the first 6 months of this year, up from $2 billion for all of 1973 and $1 billion in 1972. This $8 billion are petrodollars which at the present time are being deposited—mostly on call—by the Middle Eastern oil-producing

countries in New York banks because foreign banks cannot absorb these huge amounts any more. The U.S. banks are coping with the problem by lending these funds out overseas in short-term loans at very high interest rates. But when that market is saturated or controlled, as it should be, petrodollars will have no where else to go except into investment in the United States; first in short-term loans and then in long-term investment. When that happens it would be well for all of us to know exactly how and where those funds are going.

This law requiring disclosure of ownership, where such ownership amounts to 5 percent or more, is a first step in that direction. However, it may be necessary to also require disclosure of beneficial ownership since real ownership can be concealed through ruses such as nominee accounts, brokerage holdings, confidential bank trust holdings, and so forth.

In supporting this legislation, I wish to make it clear that the Industrial Union Department, AFL–CIO, whom I represent, does not oppose foreign investment in the United States. Long term investment, leading to an increase in productive capacity is vitally needed, and indeed we believe is essential for the achievement of price-wage stability. But such investment must be consistent with the achievement of national, social, economic, and political goals. In our judgment this bill will help to assure such consistency.

That, Mr. Chairman, completes our statement.

Senator INOUYE. Thank you very much, Mr. Clayman. We appreciate your statement very much.

By your statement I presume you do not consider this bill a measure to restrict investment, do you?

Mr. CLAYMAN. It conceivably might, where investments are inappropriate, in terms of our own national goals. But I assume that most investment will not be in that category, and I am assuming that your bill wants to ascertain that the investments are consistent with American policies.

Senator INOUYE. Thank you very much.

Senator METZENBAUM. First, I would like to express our appreciation for your appearing here. Mr. Clayman is an old friend of mine, going back many years. We served in the Ohio legislature together.

We are pleased that the AFL–CIO Industrial Union Department is here in support of the legislation.

I did want to say one thing about your point that it may be necessary to also require disclosures of beneficial ownership, since real ownership can be concealed through ruses such as nominee accounts, brokerage holdings, confidential bank trust holdings, and so on. We think—we are never certain about these matters—but we think this bill does go at that very question.

We certainly are aware of the very excellent work done by the committee headed by Senator Metcalf on the whole question of the use of nominees for ownership purposes. Senator Metcalf is a cosponsorer of this legislation. Both he and I think that the act is drafted in such a way—and I think that is also the general feeling of the administration—that it would require disclosure of the true ownership.

If it needs stronger language, we will insert it.

Mr. CLAYMAN. I am happy to hear that, Senator. On the first reading, we didn't get quite that impression. But we occasionally err too, sir.

Senator METZENBAUM. Your raising the question will cause us to go back and look again at the language.

Thank you.

Senator INOUYE. Thank you very much, sir.

Our next witness is Mr. Thomas Farmer, representing the U.S. Chamber of Commerce.

Mr. Farmer, welcome to the committee.

STATEMENT OF THOMAS L. FARMER, ON BEHALF OF THE U.S. CHAMBER OF COMMERCE; ACCOMPANIED BY KAY VEST, MANAGER OF NATIONAL CHAMBER'S INTERNATIONAL GROUP

Mr. FARMER. Thank you, Senator. I am Thomas L. Farmer, partner in the Washington, D.C. law firm of Prather, Levenberg, Seeger, Doolittle, Farmer & Ewing, and chairman of the Task Force on Foreign Investment in the United States of the Chamber of Commerce of the United States, on whose behalf I am appearing today.

With me today is Mrs. Kay Vest, manager of the National Chamber's International Group.

We appreciate this opportunity to discuss aspects of foreign investment in the United States related to S. 3955, the Foreign Investment Review Act of 1974, which we oppose.

The position of the national chamber with regard to the general subject of foreign investment in the United States is well-known. We have testified in previous hearings on this subject. In sum, we welcome the recent increase in the flow of capital and technology into the United States from foreign sources. These inflows promise to be of great benefit to the American economy.

Is there a need for further legislation?

In introducing S. 3955 on August 22, Senator Metzenbaum noted that a primary intention was "to provide Congress, the Executive and the American public with the information we shall need to formulate wise policies in the future."

This is a laudable and essential goal—and one which the national chamber recognized when we appeared before this subcommittee March 7, 1974. At that time, we were privileged to testify in support of S. 2840 introduced by the chairman of this subcommittee. The Foreign Investment Study Act of 1974, which has now been approved by both the House and Senate, recognized the paucity of systematic information regarding foreign investment in the United States. It seeks to redress this shortcoming through a study that in legislative form at least has a well-conceived framework. As we pointed out on March 7, a thorough study of direct and portfolio investment is and remains today a necessary precondition to the implementation of any major U.S. policy changes of even a procedural reporting nature in our treatment of foreign investment in the United States.

For this reason we believe S. 3955 is premature. At the very least, consideration of its far-reaching provisions should have the benefit of the sort of sound informational data S. 2840 is intended to provide.

Specifically, sections 5(10) and 6(8) of that bill mandate study of the "adequacy of information, disclosure, and reporting requirements and procedures," for both direct and portfolio investment.

As to S. 3955, beyond the fact that further legislation is unnecessary and unwarranted at this time, we have five fundamental reservations with specific regard to the proposed bill.

(1) S. 3955 represents a serious abrogation of the principle of national treatment, long adhered to by the United States. This means that, save in exceptional cases, we apply our laws and reporting requirements without discrimination between domestic and foreign enterprises in the United States. S. 3955, by setting additional requirements for the foreign investor, clearly violates this principle. We have been pushing for national treatment on behalf of U.S. investors all over the world. If needless restraints are imposed on investment here, it could start a spiral of restrictions all over the world. We would expect to see retaliatory actions taken against the very sizeable amount of American investment abroad. Also, restraints on investments, like trade restrictions, would have serious recessionary implications.

(2) We have serious reservations about the ability of the Government to administer, and of foreign and domestic companies to comply fully with, the reporting requirements of S. 3955. Even if some method, presently not specified in the legislation before this subcommittee, were devised to administer it equitably and insure full compliance, it would still be questionable whether foreign acquirers could be sufficiently identified. The problem of identifying and defining beneficial ownership, domestic and foreign, is a difficult one. Recognizing this, the Securities and Exchange Commission has recently announced that it is beginning a comprehensive review of this issue. Moreover, if terms of arrangements are to be revealed before they are consummated, this would in itself be a disincentive.

(3) Sections 5(10) and 6(8) of S. 2840, to which I referred earlier, will ultimately provide an extensive review of existing reporting systems. In the interim, private, nongovernmental information now being developed on a regular basis should be sufficient to provide an accurate enough assessment of what is taking place.

(4) S. 3955, as a remedy to a perceived problem, would be legislative overkill. We already have the statutory base to handle the isolated problems caused by foreign investment on a case-by-case basis. To enact an overall reporting requirement for foreign investors, in addition to existing corporate reporting responsibilities for all firms, would certainly inhibit the present relatively free flow of capital and technology into the United States. At a time of rampant inflation, do we want to enact public policy aimed at reducing construction of new productive facilities? At a time when we are embarked on Project Independence, do we, in a capital-short world, want to reduce inflows of capital into the United States? We believe enactment of S. 3955 would have those effects.

(5) S. 3955 appears to respond to the excessive concerns that massive investments or acquisitions will take place in the United States. We believe there is no cause for alarm at the present time. Our existing Federal and State laws are sufficiently broad to prevent foreign investments that appear to threaten the national interest.

We do not claim that foreign investment in the United States is an unmixed blessing. On the contrary, capital injections can lead to problems. Economic dislocation can be equally caused by foreign as well as domestic employers who, using advanced technological methods and paying higher wages, move into a less technologically advanced, lower wage area. Just as cases of economic adjustment result from relocation of domestic industry within the United States, some could follow foreign investment in this country.

Problems caused by economic adjustment are becoming better understood and managed, whatever the source of the dislocation. The fears that have been expressed in regard to foreign investment in the United States, however, go beyond this limited problem.

While difficult to generalize, these four popular fears are expressed most widely:

(1) Foreign firms, especially in agricultural production and natural resources development, by exporting their products back to their home countries, may exacerbate U.S. domestic scarcities and raise prices of certain commodities.

(2) Purchase of large tracts of real estate for speculative purposes may distort land prices in various areas of the Nation.

(3) Foreign penetration of defense industries may endanger national security.

(4) Depreciation of the dollar vis-a-vis several major currencies and accumulation of vast reserves of petrodollars by the oil-producing nations may lead to foreign domination of the American economy.

While some of the fears may not be entirely unjustified, much of the concern that has surrounded them is based on the fallacy that the United States lacks the statutory authority to take the necessary corrective actions.

In fact, there are numerous laws and regulations which can be used in well-defined circumstances. For example, under the Export Administration Act of 1969, the President can impose export controls both for reasons of national security and domestic shortages.

Under the Trading with the Enemy Act, the President can curb certain flows of investment both into and out of the United States. Foreign entry into mining, hydroelectric power and atomic energy is severely limited under existing law.

As far as indiscriminate real estate speculation is concerned, a number of States already have statutes which address the foreign ownership issue. There are, in addition, restrictions on the leasing and purchasing of Federal lands by foreigners.

It is clear that, in most areas of concern, existing law provides our Government with the flexibility and power to act in specific instances, should it prove necessary.

This does not mean, in any sense, that there is a coherent Government policy on foreign investment in the United States. In fact, most of these restrictions have been developed over a long period and in a hodgepodge fashion with no pretension toward a systematic treatment of this issue.

The annual accumulation of $60 billion by the OPEC countries seems to have mesmerized a portion of the American public. The

apples and oranges comparison of that $60 billion, to what it could potentially buy in the United States is inappropriate. These funds should not, in any regard, be considered as a maneuverable mass ready to shift one way or the other for purely speculative or political reasons.

In sum, at the present time, we see no cause for alarm; foreign interests will not dominate the American economy. Foreign corporations have long been good citizens and have made significant contributions to American society. Possible deviations from this standard should and can be dealt with on a case-by-case basis and not used as a pretext to apply general restrictions or new reporting requirements on all foreign investment in the United States, direct and portfolio.

Thank you very much.

Senator INOUYE. Thank you very much, sir.

I would once again like to emphasize that it is not the intention of this measure to restrict or discourage foreign investors. On the contrary, we are hoping that we can strengthen our policies of free flow of capital.

Our concern arises from the lack of information presently available in the United States. Without adequate data, the Executive and the Congress might take steps that may be very detrimental to our economy.

As you noted, although there is no need for alarm about the $60 billion OPEC surplus, it is a matter of great concern in many quarters. It is a subject of wide discussion.

You have noted, for example, in the House of Representatives there are several measures designed to restrict foreign investment.

We are hoping that this type of bill would forestall the enactment of restrictive legislation.

We also noted that there are many other countries with laws similar to the regulatory scheme under consideration here.

What do you think of the suggestions made by Mr. Needham of the stock exchange?

Mr. FARMER. I think they are very good suggestions.

Let me go back to one point. I want to remind you again we testified very strongly in favor of the legislation that was introduced under your name, which has not yet been fully enacted by the Congress, but it appears to be close, and for all of the reasons you mentioned earlier, we feel that legislation is necessary and advisable.

Our fear is that the foreigners looking at this country, noting that that piece of legislation isn't even off the ground yet, the U.S. Government is already moving toward legislation which appears to be going beyond that. That is our concern.

Foreign investment, as we know from our side, is very largely a matter of the atmosphere, how people feel about the country, and what the intentions are.

While I think we fully understand the intentions of the authors of this bill, people who are less sophisticated about the United States may feel there is something more than meets the eye there, because it follows so immediately upon another measure which is intended to do all of the things you mentioned earlier.

On your specific question, I think that the proposal of Mr. Needham is very much in line with our view, which is to let the Commerce

Department and maybe instruct the Commerce Department to implement, in terms of its study which it would undertake under S. 2840, and the equivalent House bill, to start pressing for those kinds of information.

I am very much aware also of what he said about the difficulty of identifying true ownership, both here and abroad. I personally have had long discussions with the chairman of the SEC about that problem, and I think he is as much concerned and perplexed as we are. It is very difficult to identify true ownership in this country and Senator Metcalf has pinpointed that problem in terms of domestic legislation very clearly.

I think that we would join the administration in saying that both problems should be considered together. The foreign ownership becomes extremely difficult, to know what the true owner is. I don't know how you find out if a Swiss bank is investing our funds, or British funds, or Chinese or Swiss funds. It is extremely difficult indeed how to do that, especially when funds can be transferred through a series of foreign intermediaries.

The actual investor himself may not know whose funds they are. So it is a difficult problem. And we do feel strongly it needs a lot of study, and that the legislation that has passed the Senate and the House was intended to cope with that problem, and we think it can.

Senator INOUYE. Don't you feel that this measure could provide an extra tool to those who will have to carry out the study under S. 2840?

Mr. FARMER. Well, I am not quite clear that it really would do very much that they don't already have except to tell them to move maybe more rapidly.

I think it also creates the possibility—I think there are American banks and other transfer agents who worry a great deal whether they can comply with some of the requirements, some of the identifications they will be asked to make, whether in fact they can identify some of the people for whom they may be acting as simply ordinary corporate intermediaries.

Our feeling, and I guess it is basically the feeling—we haven't talked to the administration about it—is that the legislation that is about to go on the books is broad enough to take care of the problem.

Senator INOUYE. Thank you very much, sir.

Senator Metzenbaum?

Senator METZENBAUM. Mr. Farmer, you have indicated that the legislation presently on the books is adequate to take care of the problem.

Mr. FARMER. I mean the legislation which is about to be on the books.

Senator METZENBAUM. I understand. I know what you are talking about.

How will that legislation make it possible for us or for any agency of this government using all of the powers it presently has, to determine if *x* country makes an investment via a Lebanese bank, which is turn puts the funds into a Swiss bank, which, in its turn, transfers the funds to the First National City Bank of New York with instructions to buy up 51 percent of General Motors Corporation in a nominee name. How can we learn of that under the present law?

Mr. FARMER. You can't under the present law, and I don't believe it can be found out under any other law either. I don't believe there is any power, including the power you will give the Secretary of Commerce, to know. The City Bank in New York wouldn't know, for example.

Senator METZENBAUM. Under the proposal I am making here today, the First National City Bank would report that, as far as it knows, the beneficial ownership is a Swiss bank. That means that the Swiss bank would then be required to indicate either that the bank itself owned the securities or to name the beneficial owner. Correct?

Mr. FARMER. Right.

Senator METZENBAUM. That means that if the Swiss bank refused to answer, and we were therefore unable to find the ultimate beneficial owner, the stock would no longer carry voting rights with it after a hearing conducted by the Secretary of Commerce.

That is quite different from the law as it is at present, isn't it?

Mr. FARMER. It is. Our feeling is we need a good bit more study to know whether that is the result, the remedy that we want.

Senator METZENBAUM. Mr. Farmer, let me ask you this. As you know, I am new to government and I won't be in government that much longer, but one of the things that concerns me is that everybody wants to study everything instead of providing solutions to problems.

We know $60 billion will be available this year. We know that by 1979 there will be about $550 billion in excess wealth in OPEC hands.

Now the question that concerns me is how the American Chamber of Commerce can come before us and say that we ought to study this problem. What are we studying? Just what is it you want us to study in that period?

I understand the purposes of S. 2840, and I totally support that legislation. But having studied it ad infinitum, don't you still come down at the bottom line, to the fact that they can't make a study if there is no legislation making it possible for them to get at the basic facts?

I don't understand how you can have a study if you don't know the facts.

Mr. FARMER. I think the issue here also is that at the same time the legislation that you proposed I think, besides getting facts, will also have or may well have very direct impact on the flow of funds into this country. And whether we want that tradeoff, how far you want to go and how fast is the question, I think.

Senator METZENBAUM. Let's talk about that. We all agree that the OPEC nations must find a place to use their dollars. They just can't put them in a piggy bank in Saudi Arabia or Venezuela or Kuwait.

In what nation do you think they could invest and not be subject to much stricter regulation than that which I am proposing in the legislation before us today? England? France? Mexico? The South American countries? Iran? Canada? Australia? You are welcome to a copy of the comparative legal study we have submitted into the record. In every major nation of the industrial world, with some very minor exceptions as to enforcement, there are regulations far stricter, and which go well beyond this legislation.

What are the oil producers going to do with these funds? What makes you so convinced they will turn away from us, if we say we would like to know the facts, that we would like to know you are buying 25 percent of a company in this country?

Mr. FARMER. I am not saying that this certainly will turn it away. The indications are now they are very concerned about where they are going to put their money, they haven't done very much besides an investment such as the German investment. And my impression is countries like Germany and England, for example, the restrictions are not any more rigid than ours presently are.

Senator METZENBAUM. I think they are, Mr. Farmer. I will submit the facts to you. Their laws are far stricter than ours.

Let me ask you some other questions, if I may. On page 3 of your testimony, the original draft—I am not sure where it is in the present draft—you say:

> Preliminary 1973 data indicates a moderate increase with the bulk of increase coming from Western Europe and Japanese sources. The spectre of foreign nationals buying up a number of large American companies is neither feasible nor plausible.

I would like to ask you about your basis for that statement. In 1973, when the OPEC nations did not have so many dollars to invest, foreign investment in the United States went up eight times over 1972, about 25 times over 1971, and that it was only up to $2½ billion.

So I am asking you how you justify your statement that we don't have to concern ourselves about the magnitude of this problem?

Mr. FARMER. Well, the indications so far are that the increase in direct investment that has occurred in the last few years as far as we know has not been from any of the OPEC countries.

Senator METZENBAUM. We know that, because it was not until December 1973, that the major increase in the price of oil took place.

We also know—I am sure you are aware of this fact—that there is always a 6-month lag with respect to actual payments made to the oil-producing nations. This means that the funds were not flowing to those nations until some time in the middle of 1974. They are just really beginning to flow at this time.

Mr. FARMER. But the reserves of those countries are tremendous, have been tremendous. Look at Kuwait. Kuwait even since 1966 was the largest single holder in the world of sterling. These countries have had, even before the increase in the price of oil, large reserves of capital. They are going up more rapidly now than before. But they had had an investment problem for a very, very long time. And they have traditionally gone into portfolio investments and only very recently have they made very specific arrangements like the Krupp arrangement, which as far as one can tell is designed to help the industrialization of Iran, rather than buy a stake in German industry.

So it is very hard to predict. But so far the indications are that the industrial investment has not been the objective, and all of the people we have talked to, our investors, have found virtually no interest in investment in major industrial companies with a view to running them. The industrial investment has been by other industrial countries, like ourselves, in companies that are in the business of running industry.

Senator METZENBAUM. May I point out to you that just within the last couple of weeks, the Wall Street Journal carried an article, datelined London, to the effect seven Arab nations announced that they have formed a merchant banking venture, based in Saudi Arabia. A spokesman said most of the initial ventures would be in agriculture, but the company also plans to get involved in transport, insurance, tourism, property, oil, and mineral ventures.

I think they are just beginning to move in this direction. I also think that the problem that I have with the American chamber's position is that it seems to me unrealistic to pretend that the problem doesn't exist.

You make a statement that foreign interests will not dominate the American economy. Then you go on to say that the foreign corporations have long been good citizens and have made significant contributions to American society.

I have no trouble in agreeing with that statement.

Then you say, "Possible deviations from the standards should"—underlined—"and can"—underlined—"be dealt with on a case-by-case basis, not used as a pretext to apply general restrictions or new reporting requirements on all foreign investment in the United States, direct or portfolio."

Let us assume that tomorrow morning, we were to learn that control of General Motors was in the hands of Kuwait. In just what manner do you think the President of the United States or the Congress or anybody else could deal with that on a case-by-case basis, except for some Congressman possibly getting up on the floor of Congress—it wouldn't be a Senator—and saying we ought to expropriate?

Those are the concerns I have. It seems to me if we have the information, we shall not run into this kind of situation developing in this Nation.

But I don't know how you could deal with it on a case-by-case basis.

Mr. FARMER. Mr. Needham I think referred to some of those, the reporting requirements of the SEC. I would be very concerned if I woke up tomorrow and found the ownership of General Motors had changed without anybody knowing it, whether it was foreign or domestic.

I think the question of who controls major corporations is a matter of public policy. But it would seem to me that the legislation such as the securities legislation that we have on the books is designed to deal with that problem, not in the context of foreign investment, but in terms of domestic public policy, which also is a legitimate concern that acquisition of control of major corporations be identified.

I think the securities laws are fairly adequate to avoid a surprise change of ownership of a major publicly held corporation.

Senator METZENBAUM. Although you say that, Mr. Garrett doesn't say that. When Mr. Garrett testified before this committee he said that he did not feel that they had any adequate regulations in connection with foreign investment.

Let me give you his testimony. I have it here:

> The nature of our reporting and registration requirements result in the information provided to us being somewhat incomplete and possibly inadequate or inaccurate in some cases from the point of view of someone seeking to study the influence of foreign investors in the U.S. market.

"First of all, we only require information to be filed relating to a publicly held corporation."

He said the second problem arises with the accuracy of the information filed. "Since the only indication of citizenship of non-U.S. status can be traced to the address supplied in the information filed with us, it is difficult for us,"—meaning the SEC—"to determine whether the address is representative of the citizenship of the person filing."

Furthermore, while we clearly can be certain that those investors intending to make cash tender offers for more than five percent of the equity shares file with us prior to commencement of such an offer, we cannot be certain that foreign investors in all cases comply with the requirements to file under either Section 13 or Section 16 of the Securities and Exchange Act. However, in some cases it may be possible for foreign investors, either intentionally or unintentionally, not to file with us.

So I don't believe even the SEC would claim that they have any authority to deal with this problem.

I know that they have some hearings scheduled, but that has to do with the whole question——

Mr. FARMER. I believe that was his testimony in support of S. 2840 that you are quoting.

Senator METZENBAUM. That is correct.

Mr. FARMER. I think that was the aim of moving toward that bill. I think our concern at this point is whether we are ready right now to say we are going to have remedies as stringent as removal of voting control, on failure to comply until we have had a chance for the agencies on S. 2840 to look at the problem and presumably they are going to report fairly promptly whether they have adequate authority or not.

I think you have highly sensitive areas in which we would like to move a little more slowly.

Senator METZENBAUM. With reference to moving slowly, you make this statement: "Should this bill be enacted into law, we would expect to see retaliatory actions taken against the very sizeable amount of American investment abroad."

Would you explain that to me? They are already required to register. They are already regulated. Just why would anybody want to take any retaliatory action for our doing exactly what they are doing?

Mr. FARMER. By retaliatory, I mean we have been trying to loosen the foreign restrictions. It has been traditionally our position, and it continues to be that of the U.S. Government, that the restrictions on foreign investment enacted by many countries, Japan for example, are excessive. And it seems to me what we are doing at this point is we may be given some ammunition to the very kind of restrictive policies that other countries are following, which we have felt consistently are not necessary.

For example, in France we have tried very hard and with some success to allow our computer industry to have a wider ability to operate. We have been trying to lead the road toward less distinction between domestic and foreign investment.

Senator METZENBAUM. Would you say in the last 5 years, with all your efforts, there have been more restrictions by foreign countries or less?

Mr. FARMER. I think in many countries less. We have made a good deal of progress with the Japanese. I think even in Europe there has been some advance.

True, the Canadians and some of the other countries have maybe tightened up.

Senator METZENBAUM. Australia has.

Mr. FARMER. Yes.

Senator METZENBAUM. Mexico has.

Mr. FARMER. Right. But I think the major industrial countries, the record is not bad from our standpoint.

Senator METZENBAUM. France changed its leadership and so I think there was some change there. But beyond that, you will note that our chart shows whether there is a lessening or greater amount of restriction today than there has been in the past. I think you will see that generally speaking the flow is toward more restriction rather than less.

Mr. FARMER. Well, it is hard to quantify France versus Mexico. I would say, for example, Japan has made considerable progress. There was a time when the Japanese would not permit any 100-percent ownership of a major corporation and I think there are instances now where they have agreed that that is possible.

Again I think part of it is they realize that they are going to be investors abroad, so that it is in their interest to be a little more open in their own country.

We would just like to be sure that—I think our intentions are very much the same. We are a little concerned about which way the techniques are going to cut. I think we realize your interest in the free flow of capital and technology is like ours, and also we are interested in information. It is important to know who owns a major corporation. Our concern is whether we should move right now beyond the chairman's bill or give that bill a chance to be implemented.

Senator METZENBAUM. Thank you.

Senator INOUYE. Thank you very much, Mr. Farmer, We appreciate your appearance and testimony very much.

Our final witness is Mr. David Bauer.

Welcome to the committee, sir.

STATEMENT OF DAVID BAUER, ECONOMIST, CONFERENCE BOARD, NEW YORK, N.Y.

Mr. BAUER. My name is David Bauer, and I am an economist with the conference board, an independent, nonprofit business research organization. The board's efforts are directed at analyzing business and economic conditions and not of taking positions and advocating policy. Consequently any views I may express here are necessarily my own and not those of the board.

Part of my work at the board consists of compiling data on announcements of direct foreign investments in the U.S. manufacturing sector. The data, which is published quarterly by the board, shows the industry and the state in which the investment will occur, the type of investment (construction of new facilities, expansion of existing facilities or acquisition of a U.S. company), and, when available, the

dollar value of the announced investment and the number of jobs that the announced investment is expected to create.

Attached are foreign investments in U.S. manufacturing industries during the first and second quarters of 1974.

The following remarks are based on the work I have done on foreign investment in the United States.

During the past year there have been increasing calls for more detailed information concerning foreign investment in the United States. The U.S. Department of Commerce recently reported that direct foreign investment in the United States rose to $17.7 billion in 1973, a jump $3.4 billion over the prior year; in 1972, the increase amounted to only $600 million. Because Department of Commerce figures record only foreign investments financed by an inflow of funds into the United States, and do not include investment financed through borrowings in U.S. capital markets, the total value of foreign-controlled assets in the United States is considerably higher than the Commerce Department figure. How much higher is not known. Because decisions by private industry as well as the public sector must be based upon accurate and reliable figures concerning the magnitude and structure of the U.S. economy, efforts should be made to determine the precise amount of foreign-controlled assets in this country.

A second reason for gathering data on foreign investment is to determine its impact on the domestic economy. In order to achieve this objective, it must be realized that more information is needed than simply a list of foreign controlled firms in the United States. Additional information concerning the products produced, as well as employment, sales, assets, et cetera is also required so that the operations of these firms can be examined within the context of the industry in which they operate. In other words, registration procedures that require only the name of the foreign controlled firm would be of limited analytical value.

A third reason for compiling data on foreign investment is to provide a statistical tool that can be used to analyse perceived or actual threats to U.S. sovereignty that may be posed by foreign investment. Japanese investment, for example, has been allegedly responsible for driving up land values in the Midwest and Western States, as well as curtailing the supply of certain commodities and raw materials for domestic use in this country.

More recently, the possibility of foreign ownership of U.S. corporations such as American Telephone and Telegraph, General Motors, and United States Steel, has been raised by observers concerned with the growing amount of investment funds controlled by the oil-producing nations. Purchase of controlling interests in large U.S. corporations by investors from the oil-producing nations without the consent of these corporations is so remote a possibility that it can be dismissed by analysts occupied with the realities of foreign investment in this country, but the effect of Japanese investment on U.S. land values and commodity prices is less easy to determine. Compiling data on foreign investment would facilitate the formulation of national policies concerning all foreign investment in this country.

Although the need for compiling data on foreign investment seems obvious, the most efficient means of gathering such data is less evident. The legislation proposed by Senator Metzenbaum and others calls for

the establishment of a Foreign Investment Review Administration within the Department of Commerce. This office would administer the provisions of the proposed legislation, which include monthly and quarterly reports concerning foreign investment in the United States.

It should be considered whether the objectives of the proposed legislation might not be better accomplished through data collection systems already in existence.

With regard to U.S. manufacturing firms, reports concerning operations are required by the Department of Commerce (Annual Survey of Manufacturers), the IRS (annual tax returns) and the FTC (Quarterly Financial Report for Manufacturing Corporation). All these reports provide detailed information concerning the operations of manufacturing firms; foreign firms operating in this country are currently included in these reports, although they are not separated out from domestic firms.

If foreign firms reporting to these agencies were required to identify themselves as foreign on the reporting statements, two objectives would be accomplished: (1) foreign firms in the United States would be identified without the need of burdening these firms with yet another questionnaire from a Government agency; and (2) the data needed to evaluate the operations of the foreign firms would be readily available, since both foreign and domestic firms are required to supply information on sales, employment, assets, et cetera (depending on the U.S. agency requesting the information).

Using existing information systems has some limitations, but these need not be serious. The reports required by the Department of Commerce and the FTC are sent to a sample of manufacturing firms rather than all firms. However, these samples are relatively large. In the Annual Survey of Manufacturing, for example, an estimated 65,000 of the total of 300,000 manufacturing establishments in the United States are contacted; all companies with establishments of 250 employees or more are included in the survey. This coverage, coupled with the complete Census of Manufacturing conducted every 5 years, would appear to be adequate for compiling data on foreign investment.

In short, monitoring the activities of foreign manufacturing firms in the United States might be effectively accomplished by using the resources of an existing agency rather than through the creation of a new agency with its separate administrative costs and inevitable startup complications.

Senator INOUYE. Thank you very much.

Some witnesses have suggested that we delete the provision establishing a Foreign Investment Review Administration in the Department of Commerce.

If this were done, would you be in favor of the measure?

Mr. BAUER. I believe I would, yes.

Senator INOUYE. In your statement I gather that you don't believe that our Federal agencies are providing accurate and reliable data?

Mr. BAUER. No, on the other hand I believe they are providing accurate data. The problem now is that the data are required of all firms operating in the United States, regardless of whether they are foreign or domestic.

What I am suggesting is that in acquiring the data from these companies, if the companies were required to identify themselves as foreign or domestic, you might accomplish many of the objectives that are envisioned under the proposed legislation.

As I indicated, a second advantage I feel of using this method is that you can compile a list of foreign firms in the United States, that is not too much of a trick. But let me preface that remark by my experiences, which have been mostly in the manufacturing sector. I can't speak with any degree of expertise in real estate or other areas. I have concentrated mainly in the manufacturing sector.

But manufacturing firms are required to submit a good deal of information to the Federal Government. And I am sure if these firms submitting information were required to identify themselves as foreign, if indeed they are foreign, that you would obtain a list of foreign firms operating in the United States.

And even more importantly, you would be able to analyze and assess the operations of these foreign firms within the context of the entire economy.

Senator INOUYE. Thank you. Senator Metzenbaum?

Senator METZENBAUM. Just one question.

As I understand it, you agree that we cannot find out whether or not an American company is presently controlled by foreign investors as our law is presently written. Is that correct?

Mr. BAUER. No. I think there is no sure way of finding out whether a U.S. firm is controlled by a foreign investor. But I think there is a wealth of data that if it were collected and assembled would give you a pretty good indication of where foreign investment has occurred in the United States.

I am not convinced that it is necessary to establish a new agency simply to find out the firms operating in the United States that are foreign controlled.

Senator METZENBAUM. As I understand it, your main concern has to do with establishing a new agency and an additional report.

Other than that, you support the concept of the legislation?

Mr. BAUER. That is right.

Senator METZENBAUM. Thank you.

Senator INOUYE. Thank you very much, Mr. Bauer.

We appreciate your assistance very much.

[The attachments referred to follow:]

ANNOUNCEMENTS OF FOREIGN INVESTMENT IN U.S. MANUFACTURING INDUSTRIES (1st QUARTER, 1974)

Product and State	Nationality of investing company	Type of investment	Anticipated investment	Anticipated employment
Food and related products:				
California	United Kingdom	[1] 1	$37,660,000	140
Illinois	do	[2] 4	50,000,000	[3] 6,700
California	Canada	[4] 3	30,000,000 to 40,000,000	
Tobacco: Kentucky	United Kingdom	[4] 3	3,000,000	
Textiles:				
Kentucky	Germany	[5] 2		
New York	Japan	[6] 5		
Do	do	[4] 3		
Connecticut	Germany	[2] 4		
Lumber and wood products: Massachusetts	Canada	[6] 5		
Paper and related products: South Carolina	United Kingdom	[4] 3	2,600,000	850

See footnotes at end of table.

ANNOUNCEMENTS OF FOREIGN INVESTMENT IN U.S. MANUFACTURING INDUSTRIES (1st QUARTER, 1974)—Continued

Product and State	Nationality of investing company	Type of investment	Anticipated investment	Anticipated employment
Printing and publishing:				
Undisclosed	do	[2] 4		
Texas	Canada	[4] 3	+1,000,000	
Massachusetts	United Kingdom	[2 4 6] 5	3,600,000	[3] 160
Chemicals:				
California	Germany	[6] 5	+9,000,000	[3] 3,899
South Carolina	Netherlands	[4] 3		
Alabama	Switzerland	[4] 3	5,000,000	60
South Carolina	France	[1] 1	5,000,000	20
Texas	do	[5] 2		
Puerto Rico	Panama	[5] 2	6,000,000	200
Michigan	Japan	[5] 2	2,000,000	50
Louisiana	Switzerland	[4] 3		
Texas	do	[4] 3		
North Carolina	Netherlands	[5] 2	10,000,000	200
Texas	Germany	[5] 2	100,000,000	300
Arkansas	France	[2] 4		
Texas	Germany	[4] 3	80,000,000	
Arizona	France	[4] 3	2,000,000	
Petroleum and coal products: Maryland	do	[1] 1		100
Rubber and miscellaneous plastics: California	Japan	[6] 5		
Stone, clay and glass products:				
Georgia	do	[5] 2		
Do	do	[5] 2		
California	do	[4] 3	+1,000,000	
Oregon	Taiwan	[1] 1	700,000	
Primary metals:				
South Carolina	Germany	[6] 5	+25,000,000	
Pennsylvania	United Kingdom	[4] 3	250,000	75
Maryland	France	[4] 3		
Oklahoma	Japan	[5] 2	2,600,000	
Fabricated metals: Colorado	Canada	[6] 5		
Nonelectrical machinery:				
Virginia	Sweden	[6] 5		[3] 200
Pennsylvania	Germany	[4] 3		20
New York	Japan	[2] 4		
South Carolina	Germany	[1] 1		
California	Japan	[1] 1		
Do	Canada	[5] 2		140
Do	Japan	[1] 1		
Hawaii	do	[2] 4	+1,000,000	
Electric and electronic equipment:				
Massachusetts	Netherlands	[6] 5	20,000,000	
New Jersey	do	[6] 5		
Virginia	Canada	[5] 2		
Wisconsin	do	[4] 3	430,000	
Florida	Netherlands	[6] 5	5,000,000	
Illinois	Japan	[6] 5	108,000,000	
Undisclosed	Germany	[2] 4	600,000	
Florida	Canada	[6] 5		
Transportation equipment: Pennsylvania	Liechtenstein	[6] 5	675,000	
Instruments:				
Virginia	Sweden	[1] 1		
California	Germany	[1] 1		20
Miscellaneous manufacturing:				
Connecticut	France	[4] 3	5,000,000	
Do	Denmark	[1] 1	15,000,000	
New York	Japan	[4] 3		
Industrial classification unavailable:				
New York	Japan	[2] 4	600,000	
Connecticut	United Kingdom	[5] 2		
Virginia	France	[5] 2	6,500,000	

[1] Plant construction by company not previously owning manufacturing facilities in the United States.
[2] Acquisition of U.S. company by firm not previously owning manufacturing facilities in the United States.
[3] Actual employment of acquired firm.
[4] Expansion of existing plant facilities.
[5] Plant construction by company presently owning manufacturing facilities in the United States.
[6] Acquisition of U.S. company by firm presently owning manufacturing facilities in the United States.

Note: The anticipated capital spending and employment figures for plant construction and expansion listed above are expected to be realized when these projects are completed, and not during the 1st quarter of 1974 which is the period when plans to undertake the investments were announced. Foreign acquisitions of U.S. companies announced during the 1st quarter list the actual employment of the acquired firm. Every effort has been made to make the information in the above table accurate, but complete coverage of all foreign investment activity is not guaranteed.

Source: Sales prospector; selected business and financial publications.

[From the Conference Board, Second Quarter, 1974]

ANNOUNCEMENTS OF FOREIGN INVESTMENT IN U.S. MANUFACTURING INDUSTRIES

JAPANESE FOREIGN INVESTMENT

The data on foreign investments announced during the second quarter of 1974 bring to 16 months the time span for which these tabulations have been compiled by The Conference Board. According to the Board's data, 286 foreign investments in U.S. manufacturing facilities were announced between March 1973 and June 1974. Roughly two-thirds of those investments were for construction of new facilities or expansion of existing plants; the remainder were acquisions of U.S. manufacturing companies. Actual and anticipated spending figures are available for 135, or slightly less than half, of the announced investments—a total of $2.2 billion that will be expended over a number of years, depending on the length of the construction period or the terms of the acquisition agreements.

Roughly 25 percent of the announced investments have been undertaken by Japanese firms. Investments in the textile industry and the nonelectrical machinery industry account for nearly two-fifths of all Japanese investments announced here since March 1973; other industries in which Japanese interest has been strong are chemicals and electric and electronic equipment. Japanese investments are largely in new plant and equipment; less than 20 percent have been for acquisions of U.S. firms.

Although Japanese manufacturing investments in the United States have increased in recent years, investments in nonmanufacturing industries such as mineral extraction, marketing and insurance remain considerably higher. Large-scale Japanese investment in the U.S. manufacturing sector is a relatively new phenomenon as investment in Southeast Asia has traditionally attracted an important share of foreign spending by Japanese firms.

The amount of Japan's total foreign investment runs between $4 and $7 billion, depending on how foreign investment is defined. The Fuji Bank, which puts Japanese foreign direct investment at $6.8 billion at the end of 1972, cites a consensus projection of $30 billion by 1980. The bank notes a number of factors that encourage the search for investment opportunities in foreign countries. These include the relative scarcity of raw material supplies in Japan; the difficulty of obtaining large industrial tracts within Japan, partly because of antipollution restrictions; and the "friction" sometimes created in overseas markets when Japanese exports expand rapidly. The bank observes that, while investments in the past have frequently been in labor-intensive industries, the number of recent investments in chemicals, transportation machinery, and electronics has been growing.

ANNOUNCEMENTS OF FOREIGN INVESTMENT IN U.S. MANUFACTURING INDUSTRIES, 2D QUARTER, 1974

[Legend: A, acquisition; C, construction; X, expansion; N.A., not available]

Industry and State	Domicile of investing company	Type of investment	Anticipated investment	Anticipated employment
Food and related products:				
Arkansas, Louisiana	United Kingdom	A	$23,000,000	
California	do	A	1,000,000	
Illinois	do	A		
Wisconsin	Switzerland	X	1,000,000	
Textiles:				
California	Japan	C		
North Carolina, Tennessee	Netherlands	X		
Lumber and wood products:				
Alabama	Canada	C	10,500,000	150
Missouri	Germany	C		
Oregon	Canada	A		
Furniture and fixtures: Tennessee	Sweden	X	1,275,000	75
Paper and related products: Ohio	Netherlands	N.A.		100
Chemicals:				
California	Netherlands	A		
Colorado	Switzerland	X		
Louisiana	Belgium	C	40,000,000	
Maryland	Switzerland	C		
Massachusetts	Sweden	A	1,500,000	
Do	United Kingdom	C		
New Jersey	Germany	C		
Do	Netherlands	A		
Do	Japan	C		
Do	Switzerland	A	21,000,000	1 500

See footnotes at end of table.

ANNOUNCEMENTS OF FOREIGN INVESTMENT IN U.S. MANUFACTURING INDUSTRIES, 2D QUARTER, 1974—Continued

[Legend: A, acquisition; C, construction; X, expansion; N.A., not available]

Industry and State	Domicile of investing company	Type of investment	Anticipated investment	Anticipated employment
Ohio	Netherlands	X		
Rhode Island	Germany	X	12,000,000	
Rhode Island, South Carolina	Sweden	A		
South Carolina	Germany	C	70,000,000	900
Texas	Netherlands	C		
Do	France	C		
Do	Switzerland	C		
Rubber and miscellaneous plastics:				
Alabama	United Kingdom	X	25,000,000	
North Carolina	Netherlands	C		200
Stone, clay and glass products:				
Alabama	France	A		
Connecticut	Sweden	C		
Massachusetts	United Kingdom	C		
North Carolina	Germany	A		
Primary metals:				
Arkansas	Belgium	C	20,000,000	
California	Japan	C	6,000,000	
Georgia	France	C		
Maine	Netherlands	X		
Massachusetts	United Kingdom	C	2,700,000	
Do	Belgium	X	750,000	
Michigan	France	X	2,500,000	
New York	Germany	X	2,000,000	
Fabricated metals:				
Puerto Rico	Spain	C	500,000	50
Tennessee	Belgium	X		
Nonelectrical machinery:				
Alabama	Switzerland	C		80
Connecticut	Germany	C	10,000,000	500
Kansas	Canada	A	385,000	
Ohio	do	C	1,000,000	600
Pennsylvania	United Kingdom	C		100
Do	do	A		[1] 500
South Carolina	Japan	C		
Virginia	Germany	C		
Wisconsin	do	C		
Electric and electronic equipment:				
California	United Kingdom	C		75
Do	Japan	C		
Illinois	do	X	40,000,000	
Massachusetts	do	C		
Missouri	Liechtenstein	C	3,500,000	400
New Jersey	France	A		
Puerto Rico	Netherlands Antilles	X		
Texas	Netherlands	X		
Instruments:				
California	Germany	A	3,000,000	[1] 100
Connecticut	do	A		[1] 70
Pennsylvania	Switzerland	A	2,400,000	
Do	do	A	2,600,000	[1] 150
Texas	Japan	C		
Miscellaneous manufacturing:				
Georgia	Japan	X		
Georgia, New York, Tennessee	United Kingdom	A	8,000,000	[1] 2,200
Massachusetts	France	C		
Industrial classification not available:				
California	Canada	A		
Virginia	United Kingdom	C		20

[1] Actual employment of acquired firm.

Note: The anticipated capital spending and employment figures for plant construction and expansion listed above are expected to be realized when these projects are completed, and not during the 2d quarter of 1974 when plans to undertake the investments were announced. Every effort has been made to make the information in the above table accurate, but complete coverage of all foreign investment activity is not guaranteed.

Source: "Sales Prospector." Selected business and financial publications.

Senator INOUYE. The subcommittee will now stand in adjournment.

[Thereupon, at 1:20 p.m. the subcommittee hearing was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF HON. WALTER D. HUDDLESTON, U.S. SENATOR FROM KENTUCKY

As a co-sponsor of the Foreign Investment Review Act of 1974, I am pleased to submit this statement in support of it. This bill will close an information gap which has existed too long in the area of foreign investment in the United States. In essence, it would provide for the systematic collection of investment information, something that the Federal Government does not now have the authority to do.

Foreign investment is without a doubt one of the corner stones of world economic activity. For years we have been concerned with it, primarily because U.S. foreign investment was contributing to our balance-of-payments problem. However, now that many of the world's economies have changed relative to ours, we are again concerned with foreign investment, only this time from the standpoint of how it affects our domestic economy.

Recent figures show that in 1973 foreign direct investment in the U.S. was $17.7 billion and foreign portfolio investment was $49.8 billion. This is a substantial increase from 1961 when foreign investment stood at approximately $7 billion.

When we consider that our Gross National Product totals $1.3 trillion, these figures may not surprise or concern us. However, when we stop to consider that these figures are merely so much guesswork this should and does give rise to a great deal of concern. To demonstrate the lack of reliable information we have, non-government witnesses at recent Congressional hearings testified that direct investments are probably closer to $38 billion.

Information has always been the life blood of any economy. Without a knowledge of what is happening, intelligent and rational decisions cannot be made by those who have the responsibility to do so. An outstanding example of this is the unpleasant experience the United States had with the Soviet wheat deal. A definite lack of centralized information prevented government officials from knowing fully the extent of the wheat purchases until prices went through the ceiling. Hopefully we will not again be caught in this type of situation.

I would like to stress the fact that this bill is designed and intended solely to collect and assimilate information regarding foreign investment in the U.S. It is not a device to place restrictions or obstacles in the path of such investment. The free flow of funds in the international market has always been the best method of dispersing capital. This country has consistently stood behind this basic principle even while most other countries have imposed some type of restrictions or controls on foreign investment.

Still, stories of foreign investment and direct foreign takeover of U.S. business have spawned a fear in many of foreign domination of strategic sectors of the economy. There are those who have used this to create a feeling of xenophobia or ethnic resentment against foreign investors. These fears grow when people read about 30% of Texas Gulf being bought by the Canadian Development Corporation, the takeover of Gimbel Brothers by British American Tobacco and the acquisition of Signal Oil and Gas by Burmah Oil. Furthermore, the growing capital resources of the OPEC countries will have to be invested somewhere and one of the most likely places is in the United States. It is predicted that these countries will have a surplus of funds to be invested of about $60 billion in 1974. Sufficient funds to cause any country some concern.

Most of these concerns are, however, caused by a lack of information which prevents us from putting these matters in the proper perspective. If we can obtain the basic facts about foreign investment in this country this will enable us to measure the benefits as well as understand any problems that may accompany such investment.

This bill will go a long way toward providing us with the information which is necessary if we are to fully understand the operation of our economy. To fail to collect and assimilate adequate information regarding foreign investment in this country would be a gross error in judgment on our part. An error that could once again cost us a great deal.

STATEMENT OF HON. LEE METCALF, U.S. SENATOR FROM MONTANA

I welcome the opportunity to comment on S. 3955, just as I welcome the opportunity to cosponsor the legislation with the distinguished junior Senator from Ohio (Mr. Metzenbaum). He has focused the attention of the Senate, and that of a good part of the nation's financial leadership as well, on the increasing acquisition of interests in U.S. firms by foreign investors.

The studies and hearings regarding corporate ownership and control conducted during this Congress by two Government Operations Subcommittees—my Subcommittee on Budgeting, Management and Expenditures and Senator Muskie's Subcommittee on Intergovernmental Relations—provide abundant evidence of the need for improvements in collection and publication of data regarding corporate ownership and control, domestic as well as foreign.

Congress has already provided seven independent regulatory commissions with sweeping authority to collect such information, and to make it available to other agencies and the public. (The pertinent statutes are cited or reprinted in Appendix A of Senate Document 93–62, Disclosure of Corporate Ownership, and Appendix B of Part two of the "Corporate Disclosure" hearings conducted this year by the two Government Operations Subcommittees.)

In hearings at which the various commission chairmen testified, and in follow up meetings between their and our staffs, and the General Accounting Office, we are developing uniform reporting requirements dealing with corporate ownership and control. These requirements will necessarily deal with both foreign and domestic investments in U.S. firms, S. 3955 wisely provides, in Section 4(b), that the Secretary of Commerce may receive from other agencies information relating to foreign investment. Use of independent commissions, for the collection of data, is preferable to establishing a new and duplicating system within the Department of Commerce.

In the event that additional information is needed by Commerce which the commissions do not have, S. 3955 provides in Section 7(d) that questionnaires to firms be coordinated by the General Accounting Office with those of independent Federal regulatory agencies. This provision should reduce burden on business and help obtain maximum information for the Commerce Department to use in carrying out other sections of the Act.

Our study, "Disclosure of Corporate Ownership" (Senate Document 93–62) dealt primarily with stock holdings and voting rights to that stock. S. 3955 likewise deals primarily with stock ownership. Our hearings and subsequent studies have brought home the importance of debtholdings as levers of control. Therefore, I would strongly suggest that S. 3955 be amended to provide for consideration of debtholdings in corporations as a factor in achieving control.

The proposed bill should include a provision requiring disclosure of major debt holdings in corporations covered by the bill. The levers of control over corporate activities possessed by creditors are more easily identified and more readily enforced than the control influence represented by substantial equity holdings. Major corporate creditors are not only able to influence the policies and operations of a corporation through representation on the board of directors like equity holders, but are also able to limit normal corporate activities through contractual restrictions contained in loan indentures.

Violations of indenture restrictions—examples of which shall follow—activate the default provisions of the loan indenture. This may either lead to use of specific self-help remedies written into the agreement or a general legal cause of action for breach of contract. There is no requirement—that creditors first seek redress from corporate management or through the corporate elective process before pursuing their contractual and legal remedies—as there is for shareholders in derivative suits. Furthermore, control exercised by creditors under a loan indenture can be quite specific and as restrictive as desired so long as it is legal. Finally, most indentures contain a provision allowing for waiver or amendment of the original agreement by vote of a specified majority of that class of debt holders, thus leaving the majority in a position to extract conditions from management in return for their cooperation. *No reporting system intended to measure and illustrate the impact of foreign investment on American corporations can be effective unless it encompasses the creditors of corporations.*

An example of the dominating influence creditors can have on a major corporation is found in the recent history of the Anaconda Company, the third largest producer of primary copper and among the ten largest aluminum producers in

the United States. A consortium of banks, led by the Chase Manhattan Bank, was able to gain actual operational control of this corporation through their position as the primary creditors of Anaconda. Information detailing the identity of Anaconda's major debt holders is not completely available, and the data which is available can only be retrieved by a time-consuming search of the company's file at the Securities and Exchange Commission. The public reports issued by the company only disclose the amount of long and short term debt outstanding and do not identify the primary creditors by name or describe the restrictions contained in the loan indentures. Such information is basically available in the 8K and 10K reports required to be filed with the SEC, but it is not compiled in a readily usable format. Interested persons must arduously dig through voluminous files. There is no present system for reporting the identity of those holding publicly traded debt securities, and thus there is no way of identifying the persons, institutions or governments who may vote to enforce or waive provisions of trust identures in return for special considerations.

The influence of major creditors on the operations of Anaconda dates back at least to 1961 when three of the ten members on the board of directors represented financial institutions with which Anaconda had a debtor relationship. To those three—Brown Brothers Harriman, Citibank and Metropolitan Life—a fourth was added in 1966 when an officer of Chase Manhattan Bank joined the board. The next year, 1967, Anaconda reported a $125 million revolving line of credit with a group of New York banks, and approximately $73 million had been borrowed under that line by the end of the year.

On April 1, 1968, the company announced a new credit agreement for $75 million with Chase Manhattan, Chemical Bank, Citibank, Morgan Guaranty, and several smaller banks. The agreement provided for modification of the lending terms by vote of those holding 60% of the total amount committed or outstanding—60% being the exact percentage held by the four largest banks participating in the loan.

Anaconda made its first public debt sale with a $150 million debenture offering on December 1, 1968. A substantial portion of the proceeds was used to retire the amount outstanding on the original $125 million revolving credit and the bulk of the remainder was used to pay off other debt. Chase Manhattan was named trustee under the trust indenture and thus was placed in the position of exercising the discretionary enforcement provisions of the indenture.

The indenture provides that the trustee shall initiate action in event of default and even prohibits individual suits by holders unless written notice is given to the trustee, reasonable indemnity for costs related to the suit is offered, 25% of the holders have requested the trustee to act, and he has failed to act.

The trustee is also granted a preference in the repayment of short-term loans made to the company within four months of a major default. No approval of the holders is needed for the trustee to make the indenture more restrictive for their benefit or for him to interpret ambiguities in the indenture. The indenture specifically allows for Chase to continue to have one representative on the Anaconda board of directors.

Debenture holders are also granted substantial powers by the indenture. Those holding the majority of the principal amount outstanding can waive past defaults not affecting payments of principal or interest. They can also direct the trustee to pursue remedies under the idenfure in a specified manner and can actually remove the trustee if they are not satisfied with him. A two-thirds majority of the holders may execute supplemental indentures in league with the company and all holders are bound by such agreements.

The trust indenture restricts certain corporate activities much like the credit agreement executed with the banks. There are prohibitions against Anaconda permitting prior mortgages and liens, sales or leasebacks of property, and certain mergers. The company also is pledged not to take advantage of any stay or extension law which affects the trust indenture covenants.

The $75 million bank credit agreement was increased to $100 million on July 1, 1969, and more banks were added to the consortium. Five days earlier, on June 26, Anaconda had announced that most of its Chilean operations were to be nationalized under a plan providing immediate compensation for 51% of the properties and a future negotiated settlement for the remainder.

A new $250 million revolving credit agreement was signed on May 1, 1970, replacing the existing $100 million line. Eighteen banks participated in the agreement, but five large New York banks, including Chase Manhattan, Chemi-

cal Bank, Manufacturers Hanover, Morgan Guaranty and Citibank, accounted for 60% of the amount to be loaned. Once again, the specified majority needed to alter the terms of the agreement was 60%.

One restriction on corporate activities which was written into the agreement, and subject to waiver by the five principal banks at their discretion was that current assets must exceed current liabilities by $225 million or 20% of sales. Another was that the company could not obtain any other debt by permitting a prior lien on its assets. Anaconda was also restricted as to the sale and lease-back of its assets and the sale of more than 25% of the stock in any major subsidiary. Violation of those and other restrictions was included as one of the specific conditions of default.

Events in Chile during 1971 had a profound effect on Anaconda's credit relationships. On July 16, 1971, the President of Chile issued a decree nationalizing all major copper-producing properties which nullified the company's previous formal compensation agreement with the Chilean government. In October, Chile announced that Anaconda would not receive compensation for most of its nationalized properties because the company had taken the fair value of those properties in "excessive profits" during earlier years.

In February 1972, Anaconda filed claims aggregating $174.4 million with the Overseas Private Investment Corporation, a Federal government corporation which had assumed the responsibility for expropriation insurance from the Agency for International Development in 1971. OPIC admitted liability for only $12 million and the dispute over the rest has been in the courts ever since.

The political problems faced by Anaconda's management in Chile were matched by their credit problems with major bank lenders in New York. The company was forced to report a loss of $356 million for 1971 in contrast to the $64 million profit reported in 1970. The dividend per share decreased from $1.90 in 1970 to $.50 in 1971 and no dividends at all were declared for the last two quarters of the year. During the midst of this financial turmoil, Anaconda announced that John B. M. Place had been elected chairman of the board, president and chief executive officer. Mr. Place had been on Anaconda's board since 1969 representing Chase Manhattan Bank, the trustee for Anaconda's $150 million of public debentures and one of the lead banks in the company's May 1, 1970 revolving credit agreement for $250 million. Several existing officers and directors resigned or gave notice of retirement during this period.

After the ascendancy of Mr. Place to chief operating officer, Anaconda's pattern of debt relations changed dramatically. On April 19, 1971, before President Allende announced his nationalization plan, the company had borrowed $160 million under the $250 million bank credit agreement. The loan balance was reduced to $110 million by the end of 1971, and was paid off entirely and the credit agreement terminated on July 31, 1972.

The effect on Anaconda of giving priority to satisfying its major bank creditors is reflected in the percentage of the company's total financial resources which was devoted to reducing long term debt. In 1970, Anaconda used 2.2% of its total financial resources for the reduction of long term debt. That figure rose to 28% for 1971 due to the reductions occurring after the Chilean nationalization announcement. In 1972, more than 47% of total resources was used to reduce long term debt. The amount of long term debt outstanding declined 28% from the end of 1971 to the end of 1972.

Money devoted to reducing long term debt cannot be used to purchase productive plant and equipment, so Anaconda was forced to cut back its expansion and modernization program. The company was able to obtain alternate financing for some of its activities. A $30 million credit agreement was arranged with a consortium of smaller banks during the fall of 1971, and a $20 million loan was obtained from Security Pacific National Bank in March of this year. An arrangement involving a direct $28 million loan to the company and Anaconda's guarantee of a $72 million loan as part of a leaseback was worked out with three large insurance companies and some banks in June 1972. The major New York banks have not given Anaconda a major extension of credit since being paid off in July 1972.

Anaconda's rapid repayment to major bank lenders under the direction of Mr. Place, a former Chase representative, illustrates the fundamental advantages of the creditor over the shareholder. Shareholders generally have no right to redeem their stock with a corporation and thus remove their capital from the use of the corporation, especially when adversity arises and the company needs all of

its financial resources. Influential creditors, however, can reclaim their capital at the very time when it is most needed. The possibility of a substantial and rapid cash drain is not lost on corporate managements, and major creditors are treated accordingly. The power and influence of major lenders cannot be underestimated.

The Anaconda experience illustrates very well the power of major creditors to influence corporate policy through participation on the board of directors and to actually achieve operational control in some cases. The threat of losing credit and the resulting effect on financing present and future operations is much more real to most corporate managements than the threat of a shareholder takeover. Managements have great control over the terms of the corporate charter and by-laws governing the rights of shareholders. But loan indentures are designed by creditors to protect their interests and the terms remain fixed for the length of the contractual agreement. The ability of creditors to exact stringent limitations on corporate activity and to influence managements by the offering or withholding of credit is even greater during times of tight money such as the present.

The potential influence of commercial loan creditors can be readily assessed by identifying the financial institution, the amount of the loan, the terms of the indenture, and the representatives from the institution who are actively involved in the affairs of the corporation. Major corporations already file such data with the SEC. However, it is very difficult and time consuming to sort it out. It should present no greater burden to report it in a relevant format consistent with the provisions of this bill.

In regard to public debt offerings, there is urgent need to establish a reliable reporting system for the purpose of identifying significant holders of a corporation's debt. Holders of bonds and debentures have powers similar to those of banks under a credit agreement, in that specified numbers of the holders may petition the trustee for enforcement or waiver of indenture provisions and can even replace the trustee if they desire. Trading of these debt securities can very easily lead to concentration of ownership in a person or institution representing a foreign interest.

The amount and terms of the trust indenture as well as the identity of the trustee can presently be retrieved from SEC reports, even though the process is difficult. But there is currently no way of determining who has the power to exert the levers of control represented by substantial public debt holdings.

The potential for substantial foreign influence through debt holdings is perhaps even greater than through equity holdings, due to the nature of the debtor-creditor relationship. The example of Anaconda vividly demonstrates that it would be a serious oversight not to require timely and periodic reporting of major corporate debt holdings.

Mr. Chairman, I appreciate the opportunity to comment, and would be pleased to provide such additional information from our studies as your members may desire.

With your permission, I shall include for the hearing record a pertinent excerpt from the article, "Corporate Ownership and Control: The Large Corporation and the Capitalist Class," by Professor Maurice Zeitlin of the University of Wisconsin. His article appeared in the March, 1974 issue of *The American Journal of Sociology*.

The article follows:

We know, for instance, that the largest corporations in the United States are now typically "multinational" or "transnational" in the sense that the "sheer size of their foreign commitment," as *Fortune* puts it (Rose 1968, p. 101), and the "extent of their involvements is such that, to some degree, these companies now regard the world rather than the nation state as their natural and logical operating area." Is it the "managements" of these corporations that determine their broad policies? Or do the individuals, families, and other principal proprietary interests with the greatest material stake in these corporations impose their conceptions of the issues and demand that their objectives are pursued in order to maintain the "world . . . as their natural and logical operating area"? Here, clearly, we verge, once again, on the class questions raised at the outset of this article. To take a more limited issue, however: many of the multinational corporations face increasing risk of nationalization of their foreign properties. "Management" may plan for such contingencies, exercise their "discretion," and decide on the tactics to be adopted. When their planning goes awry or proves ineffective, however, must the management answer to their corporation's principal

shareowners and other proprietary interests (such as banks) or not? Having left management in charge of the everyday operations of the corporations abroad, with little or no interference, do the principal proprietary interests have the power to interfere when deemed necessary? Without an analysis of concrete situations and the specific control structure of the corporations involved, we cannot answer such questions—though occasionally particular events momentarily illuminate the actual relationships involved (though they may still remain largely in the shadows). Thus, for example, the Chilean properties of Kennecott Copper Corporation and Anaconda Company were recently (1971) nationalized in Chile. These two corporations, which owned the major copper mines of Chile, had adopted different long-range strategies to deal with the rising probability of nationalization. We cannot explore the details here, but suffice it to say that Kennecott's strategy was reportedly aimed at insuring, as Robert Haldeman, executive vice-president of Kennecott's Chilean operations explained, "that nobody expropriates Kennecott without upsetting customers, creditors, and governments on three continents" (Moran 1973, pp. 279–80). Kennecott was able to "expand very profitably in the late 1960's with no new risk to itself and to leave, after the nationalization in 1971, with compensation greater than the net worth of its holdings had been in 1964. In contrast, Anaconda, which had not spread its risk or protected itself through a strategy of building transnational alliances, lost its old holdings, lost the new capital it committed during the Frei regime [preceding Allende's socialist administration], and was nationalized in 1971 without any hope of compensation" (Moran 1973, pp. 280–81).[1]

Now, according to Berle and Means (1967, p. 104) and Larner (1970, pp. 74–79), both Kennecott and Anaconda have long been under "management control." In Kennecott's case, there is relatively persuasive evidence that it is, in fact, probably controlled by the Guggenheim family and associated interests rather than by "management."[2] Whether this is so or not, Kennecott's "successful tactics" in Chile did not test the reality of its alleged control by management. However, Anaconda's "management" was submitted to a rather clear test of the extent to which it had control. Within two months after the Chilean government "intervened" in Anaconda's properties and a month after it took over Anaconda Sales Corporation's control of copper sales, it was announced in the

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[1] The destruction of the constitutional government and parliamentary democracy of Chile, and the death of her Marxist president, Dr. Salvador Allende, at the hands of the armed forces on September 11, 1973, has once again given Anaconda (and other foreign corporations) "hope of compensation." The military regime's foreign minister, Adm. Ismael Huerta, announced within a week of the coup, that the " 'door was open' for resumption of negotiations on compensation for United States copper holdings nationalized by President Allende" (*New York Times*, September 30, 1973, p. 14).

[2] Kennecott illustrates well our insistence on the importance of knowledge of a corporation's critical historic phases in disclosing the actual locus of control. The Guggenheim interests bought control of the El Teniente copper mine from the Braden Copper Company in 1908; in 1915 they sold it to the Kennecott Copper Corporation, in which Guggenheim Brothers was the controlling stockholder. In 1923, Utah Copper, in which the Guggenheims had a minority interest, also purchased a large bloc of Kennecott's shares (Hoyt 1967, p. 263). Yet for Berle and Means (1967) only six years later (their data were for 1929) Kennecott was "presumably under management control" (p. 104). When World War II began, as a historian close to the Guggenheim family has written, the "Guggenheims created a new Kennecott Copper Corporation, which would have three million shares. This corporation bought up the Guggenheim copper holdings," including 25% of Utah Copper Company's stock, and controlling interests in Copper River Railroad and other "Alaska syndicate holdings" (Hoyt 1967, p. 263). The Guggenheim Brothers also had (until purchased recently by the Allende government) the controlling interest in Chile's Anglo-Lautaro Nitrate Company, organized in 1931 out of previous nitrate holdings controlled by the Guggenheims (Lomask 1964, p. 281) and reorganized in 1951 by Harry Guggenheim (a senior partner of Guggenheim Brothers), to bring in two other smaller Guggenheim-controlled firms. Guggenheim presided as board chairman and chief executive officer of Anglo-Lautaro until his retirement in 1962. Previously, he had been "absent from the family business for a quarter of a century," until in 1949 his uncle enjoined him to reorganize Guggenheim Brothers (Lomask 1964, p. 65). In 1959 the Guggenheim Exploration Company, one of whose partners was a director of Kennecott Copper Corporation in which "the Guggenheim foundations" now also held large holdings, was also revived (Lomask 1964, p. 281). The son of one of the original Guggenheim brothers (Edmond A., son of Murry) "maintained an active interest in Kennecott Corporation" as a director (Lomask 1964, p. 295), while Peter Lawson-Johnston, a grandson of Solomon Guggenheim, was as of 1966, a partner in Guggenheim Brothers, a director of the advisory board of Anglo-Lautaro, a director of Kennecott, a director of Minerec Corporation, the vice-president of Elgerbar Corporation, and the trustee of three Guggenheim foundations (Hoyt 1967, p. 348). In the period from roughly 1955 to 1965, Burch (1972, p. 48) found Kennecott had "significant family representation as outside members of the board of directors," and concluded it was under "possibly" Guggenheim family control. This is certainly a cautious understatement, given the historic evidence presented here, drawn from works by two writers close to the Guggenheim family.

New York Times (May 14, 1971, p. 55) that Mr. John B. Place, a director of Anaconda, and a vice-chairman of the Chase Manhattan Bank (one of its four top officers, along with David Rockefeller, chairman, and the president and another vice-chairman) was to become the new chief executive officer of the Anaconda Company. (Other Anaconda directors who were bankers included James D. Farley, an executive vice-president of First National City Bank, and Robert V. Roosa, a partner in Brown Brothers, Harriman and Company.) As the *New York Times* reporter (Walker 1971) explained, Mr. Place had no mining expertise ("it is assumed he would not know a head frame from a drag line"), and though he had been an Anaconda director since 1969, he "lives in the East and has never attended the annual [stockholders] meeting held regularly in Butte, Montana," where Anaconda's most important American copper mines are located. In the wake of this Chase Manhattan officer's installation as Anaconda's chief executive officer, "at least 50% of the corporate staff," including John G. Hall, Anaconda's former president, "were fired. Chairman [C. Jay] Parkinson took early retirement" (*Business Week*, February 19, 1972, p. 55). The decimation of Anaconda's allegedly controlling management illustrates the general proposition that those who really have control can decide when, where, and with respect to what issues and corporate policies they will intervene to exercise their power.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW,
Detroit, Mich., September 11, 1974.

Hon. HOWARD METZENBAUM,
U.S. Senate,
Washington, D.C.

DEAR SENATOR METZENBAUM: The UAW fully supports the Foreign Investment Review bill, introduced by you and Senator Inouye, whose purpose is to make it possible for the Secretary of Commerce to gather, analyze and distribute information on foreign direct investment coming into the U.S.

We are surprised to learn that this is not already being done as a matter of course. The U.S. Customs keeps track of *things* coming into the U.S.; U.S. Immigration keeps track of *persons* coming here. What possible reason could there be for not keeping track of *investments* coming in?

We reason, consequently, that even if there were no potential critical situation regarding large inflows of petrodollars, the Foreign Direct Investment Review legislation would be necessary.

Sincerely,

LEONARD WOODCOCK, *President.*

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., September 18, 1974.

Hon. DAN K. INOUYE,
Senate Office Building,
Washington, D.C.

DEAR SENATOR DAN: Attached is a copy of a letter that relates information relative to foreign development of this country's energy resources. I trust you will find it informative, and I respectfully request that it be inserted in the hearing record where and when appropriate.

With kind personal regards, I am

Sincerely yours,

JOHN H. DENT, M.C.

Enclosure.

100 KEARNEY STREET,
Denver, Col., September 12, 1974.

Hon. JOHN H. DENT,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN DENT: I have read with interest an AP news release published herein Denver which relates to foreign acquisition of coal and other minerals. Your amendment in regard to this issue is long overdue and a much needed piece of legislation. Another aspect to this overall problem is the question

of U.S. uranium resource development by foreign interests when, at the same time, one sees dire predictions of anticipated shortages of this mineral in various official reports. Relating to this issue is the U.S. Atomic Energy Commission's published statement that available uranium reserves in the United States are quite limited. The reserves in the $8–10 per pound category may last only 20 years at the projected U.S. use rate. Assuming that a breeder technology is achieved by 1986, the Commission estimates both proven and potential reserves at $8 per pound would only last through the year 1990.

The Rio Algom Uranium Mill in Utah has recently signed a contract with the Sydkraft Utility Company of Sweden. The result of this contract is that U.S. uranium reserves are being developed at the expense of the environment and the ore is being enriched by the AEC, utilizing large quantities of U.S. electrical energy to supply energy for Sweden's use. It can be argued that the U.S. is receiving a balance of payments benefit to offset the loss of these reserves. However, the Rio Algom Mill is owned and operated by the Rio Algom-Rio Tinto Corporation which is based in Toronto, Ontario, Canada. Realistically then, the U.S. is bearing all the environmental expense and expending its natural resources to make money for a Canadian corporation and energy for a Swedish utility. It is clear that every pound of U.S. uranium reserve shipped out of the country reduces the 20-year period during which U.S. utilities can be assured of economical sources of uranium ore.

From the standpoint of protecting and developing U.S. uranium reserves to meet the energy needs of this country, the exportation of 500,000 pounds of uranium to Sweden should receive serious scrutiny. Export approval of this type of sale is necessary, but, to date, has not been refused. The Rio Algom contract is not a precedent in foreign uranium sales. The U.S. reactor producing companies sell nuclear plants around the world, and usually include the first core of uranium fuel loading which is obtained from U.S. ore and enrichment facilities. The anticipated shortage of uranium in the near future necessitates a thorough review of government regulations covering the use of these resources. It is my hope that these facts could serve to reinforce your case should you have a need to do so.

Sincerely yours,

PAUL B. SMITH.

COUNCIL ON INTERNAL ECONOMIC POLICY,
Washington, D.C., October 8, 1974.

Hon. DANIEL K. INOUYE,
Chairman, Subcommittee on Foreign Commerce and Tourism,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: In my testimony on S. 3955 on September 18, 1974, I said that the Administration, in view of the Congressional concern on this issue, would make every effort to accelerate and intensify a comprehensive review of existing requirements for reporting on foreign investment in the United States. I wish to inform you that I have instructed the CIEP Task Force on Foreign Investment in the U.S. to develop a comprehensive compilation of existing reporting requirements with respect to foreign investment in the U.S., noting the legislation under which the information is gathered and whether there are any constraints on the use of data. A copy of the study outline for this effort is attached, and I would appreciate any comments you or your staff might have with respect to the nature and extent of our review. I have asked that the review be done on an urgent basis so that I can make a further report to you at an early date on its results, including such recommendations as appear warranted by the facts.

With this report in hand, the Executive Branch and the Congress will be able to make sounder judgments on any further action or legislation that may be required. Thus, we strongly recommend that any further consideration of legislation on reporting and disclosure on foreign investment in the United States be deferred until the review has been completed and its results considered by the Executive Branch and your Subcommittee.

I request that this letter be made a part of your Subcommittee's report on S. 3955.

Sincerely,

W. D. EBERLE,
Executive Director.

Attachment.

ANNEX

Outline of Information Which Should be Included In Report on Reporting and Disclosure Requirements re Foreign Investments in the United States

EXISTING REPORTING REQUIREMENTS

1. All laws, rules, regulations or other procedures that require reporting of information as to the identity, location, and/or nature (i.e., beneficial vs. record owner) of (a) shareholders (or partners) of U.S. corporations (or firms), (b) the holders of short- and long-term debt of U.S. corporations; and (c) holders of real estate.
2. Any laws, rules, regulations or other procedures that establish special reporting requirements (in addition to the general requirements in (1) above) for (1) foreign investors in general and/or (2) foreign governments or government-controlled institutions.
3. In responding to (1) and (2) above, the precise legal basis for the requirements should be cited and copies of all relevant statutes and reporting forms should be supplied.

ENFORCEMENT OF REPORTING REQUIREMENTS

1. A statement of the enforcement powers (e.g., penalties or subpena or injunctive powers) which exist to ensure compliance with the agency's data collection.
2. A discussion of the degree to which such laws, rules, regulations or procedures are effective or ineffective, including information on the extent to which they are being responded to voluntarily or must be enforced. (Cite examples where existing enforcement powers have been used to ensure compliance).

PUBLIC DISCLOSURE OF DATA

1. The extent to which information collected is made available to the public.
2. Sample copies of the reports or other publications in which the data collected is made public.
3. The confidentiality requirements (citing relevant statutes and/or administrative regulations) under which the collecting agency operates, as well as any other restrictions on the use of data collected.

ADEQUACY OF EXISTING REPORTING

1. Gaps in the scope or coverage of reporting (e.g., extent of exceptions or exemptions).
2. Factors which make it difficult or impossible to determine the true identity of the foreign beneficial owner who ultimately receives the dividends and/or exercises the voting rights (especially in cases where foreign nominees are used).
3. Deficiencies in existing enforcement powers which make it difficult to overcome the gaps in (2) above or which hinder effective data collection generally.

RECOMMENDATIONS FOR IMPROVEMENT

1. The changes which could be made *administratively* in existing regulations or reporting forms to correct the deficiencies identified above.
2. Any additional legislative authority (either by amendment to existing laws or totally new legislation) that would be necessary, in your view, to improve the program of your agency relating to the collection and disclosure of information dealing with foreign investment in the U.S..
3. Any special reporting requirements that might be needed to deal with problems peculiar to investment by foreign governments or government-controlled institutions.

COMPLIANCE WITH EXISTING LAWS RESTRICTING FOREIGN INVESTMENT IN THE U.S.

1. List of laws restricting or otherwise limiting foreign investment in the U.S. administered by your agency (see attachment for partial list).
2. Statement of procedures used by your agency to ensure compliance with these laws.

3. Any suggestions for revision of statutes (or regulations) which are necessary to ensure compliance.

Attachment.

I. GENERAL RESTRICTIONS ON FOREIGN CONTROLLED ENTERPRISES

Foreign controlled enterprises operating in the United States, whether in branch or subsidiary form, may not: [1]

(a) engage in operations involving the utilization or production of atomic energy (42 USC 2133(d)).

(b) own vessels which transport mechandise or passengers between U.S. ports, or which tow U.S. vessels carrying such merchandise or passengers between U.S. ports. (46 USC 802, 883, 888) There are exceptions to this general rule, one of which permits a foreign controlled U.S. manufacturing or mining company to engage in shipping activities related to its principal business. (46 USC 883–1).

(c) acquire rights of way for oil pipe-lines, or leases or interests therein for mining coal, oil or certain other minerals on federal lands other than the outer continental shelf if the foreign investor's home country does not permit such mineral leasing to U.S. controlled enterprises (30 USC 181, 185; 43 CFR 3300.1).

(d) engage in radio or television broadcasting, unless the Federal Communications Commission finds the grant of a license to be in the public interest (47 USC 310). (The FCC has granted licenses for broadcasting activities ancillary to another business of a foreign controlled enterprise.)

(e) acquire a controlling interest in a telegraph company (47 USC 222(d)).

(f) acquire control of a company engaged in any phase of aeronautics, unless approval is granted by the Civil Aeronautics Board (49 USC 1301(1), (13); 78A(4); (1378(f)).

(g) be issued permits for intra-United States air commerce or navigation (49 USC 1371, 1401(b), 1508).

(h) obtain special government loans for the financing or refinancing of the cost of purchasing, constructing or operating commercial fishing vessel or gear (16 USC 742(c)(7).

(i) sell absolete vessels to the Secretary of Commerce in exchange for credit towards new vessels (46 USC 1160(b)).

(j) receive a preferred ship mortgage (46 USC 922).

(k) purchase vessels converted by the government for commercial use or surplus war-built vessels at a special statutory sales price (50 USC App. 1737, 1745).

(l) obtain special government emergency loans for agricultural purposes after a natural disaster (7 USC 1961) or government loans to individual farmers or ranchers to purchase and operate family farms (7 USC 1922, 1941).

(m) establish an Edge Act corporation to engage in international or foreign banking (12 USC 619).[2]

(n) purchase Overseas Private Investment Corporation insurance or guarantees (22 USC 2198(c)).

(o) obtain construction-differential or operating-differential subsidies for vessel construction or operation (46 USC 1151 ff., 1171 ff., 802).

(p) acquire or charter, without the approval of the Secretary of Commerce, U.S. flag vessels, vessels owned by a U.S. citizen, or shipyard facilities (46 USC 835).

(q) acquire the controlling interest in corporations owning the vessels or facilities described in (p) above (46 USC 835).

(r) obtain war-risk insurance for aircraft (49 USC 1531, 1401).

II. MANAGEMENT-RELATED RESTRICTIONS ON FOREIGN ENTERPRISES

In certain cases a foreign controlled enterprise operating in the United States must meet certain requirements relating to management in order to engage in particular activities. The foreign investor, however, can continue to own all the equity in the enterprise, because the laws in question do not contain limitations relating to stock ownership. Unless these management requirements are met, foreign controlled enterprises may not:

[1] In certain cases foreign enterprises can acquire a minority interest in corporations engaging in the activities noted but certain management requirements may have to be met. (Cf. Sec. II)

[2] In addition to its limitations on stock ownership by foreign enterprises, the Edge Act requires that all the directors of the corporation be United States citizens.

(a) organize a national bank (all the directors must be United States citizens) (12 USC 72)

(b) engage in dredging or salvaging operations in U.S. waters. (To register a vessel to engage in these activities, the President or chief executive officer of a domestic corporation, and the chairman of its board, must be U.S. citizens, and foreign citizens serving as directors cannot be more than a minority of the number necessary to constitute a quorum). (46 USC 316, 11)[a]

(c) fish in the territorial waters of the United States, land fish caught on the high seas, and, except for corporations of countries with traditional fishing rights), fish in the United States fishing zone. (See (b) above for the management requirements.) (16 USC 1081, 1091; 46 USC 231)

(d) transport certain commodities procured by or financed for export by the United States government or an instrumentality thereof. (See (b) above for the management requirements.) There are certain statutory exceptions to this rule. (15 USC 616(a); 46 USC 1241)

(e) obtain certain types of vessel insurance. (See (b) above for the management requirements.) (46 USC 1281 ff.)

(f) obtain licenses to operate as customs-house brokers (19 USC 1641) (At least two of the officers must be U.S. citizens.)

III. RESTRICTIONS APPLICABLE TO FOREIGN BRANCHES OR INDIVIDUALS

In certain cases the form of business organization chosen by a foreign controlled enterprise will determine whether it will be treated differently from an enterprise controlled by United States citizens. If a foreign controlled enterprise chooses to operate through a sole proprietorship or a branch office, rather than a corporation organized under the laws of one of the states, it may not:

(a) obtain licenses to construct dams, reservoirs, power houses, and transmission lines (16 USC 797(e))

(b) obtain licenses to develop and utilize geothermal steam and associated resources on federal lands (30 USC 1001 ff.)

(c) obtain certain rights of way, mining rights, leases, or other rights on federal lands (See generally 43 CFR Subchapters A & D)

These restrictions would not apply if the foreign controlled enterprise operated through a domestic subsidiary.

In addition to restrictions previously noted, foreign citizens may not:

(a) act as officers and serve in certain other positions on certain vessels (Cf. 46 USC 221)

(b) function as operators in radio or television stations (47 USC 303(1))

(c) practise before the Tax Court or the Court of Claims (Tax Court Rules, 2; Court of Claims Rules, 201)

UNITED TRANSPORTATION UNION,
Cleveland, Ohio, November 5, 1974.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Washington, D.C.

DEAR MR. CHAIRMAN: I am writing to you in support of S. 3955, the Foreign Investment Disclosure Act, which I understand is being marked up by Senator Inouye's Subcommittee on Foreign Commerce and Tourism.

I think this is an important bill. At a time when the oil producing nations are searching for ways of investing tens of billions of excess dollars, the American public and the U.S. government ought to know exactly who is making sizable new investments in U.S. industry. Senator Metzenbaum cites several rather alarming cases in which Middle East investors suggest that they plan to use the economic power of their "petrodollars" for political purposes. I have no doubt that that threat is real, and it deeply concerns me. It takes little imagination to realize that investments of the size now possible could have a profound and conceivably negative effect on production, employment, and working conditions in major U.S. industries.

I think Senator Metzenbaum is absolutely right in calling for full disclosure of foreign investments.

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[a] To the extent that these activities involve the coast-wise trade, certain limitations on stock ownership would have to be met. (Cf. Sec. I)

I would urge you to do everything you can to speed favorable consideration of S. 3955 by the Commerce Committee and the full Senate, before the end of this session.

With best regards, I am

Sincerely,

AL H. CHESSER,
President.

AMERICAN BANKERS ASSOCIATION,
Washington, D.C., November 18, 1974.

Mr. ERIC LEE,
Counsel, Subcommittee on Foreign Commerce and Tourism,
Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR MR. LEE: Attached, you will find the comments of the American Bankers Association with respect to S. 3955, the Foreign Investment Disclosure Act. We sincerely believe that there is no need for this legislation since the Williams Corporate Takeover Act of 1968 (PL 90–439) already requires disclosure of pertinent information when a person or group of persons seek to acquire a substantial block of equity securities (5% or more ownership) of a corporation through open market or through privately negotiated purchases. Although the original purpose of this Act was to protect other investors of a sought-after corporation, the information required to be filed with the SEC under the Williams Act would serve many of the purposes of S. 3599.

We do not believe that the potential adverse impact that S. 3955 will have on desirable investment in the United States can be over emphasized. In European countries, it is in the highest tradition that any business dealing of a financial nature be kept in the strictest of confidence. To say the least, disclosure of any aspect of a customers account is a serious breach of faith and confidence. It can be easily understood that if a foreign investor runs the risk of having his financial holdings made public, he will simply take his money out of this country and invest it elsewhere.

We would also like to stress that the burden of disclosing the true identity of the foreign owners of assets located in the United States be properly placed on the foreign owners and not their agents. We strongly urge, therefore, that American agents which hold securities for foreigners in custodial accounts be exempeted from having to file reports contemplated by this bill. If reports must be filed we urge that simplified forms of aggregate reporting be allowed on a periodic basis.

Sincerely,

RAYMOND RAEDY.

COMMENTS ON S. 3955 SUBMITTED BY THE AMERICAN BANKERS ASSOCIATION

SECTION 2. FINDINGS AND PURPOSES

The last sentence of this section reads: "Nothing in this Act is intended either to restrain or to deter foreign investment in the United States."

Comment.—While this might be the intent of the bill's sponsors, we firmly believe that as presently drafted, this bill will do more to drive foreign investors out of the United States than any other law or regulation now in force. Persons who might desire to invest in the United States will be actively discouraged because of the stringent disclosure requirements. At present, many foreign countries prohibit their citizens (and in some cases, anyone residing therein) from investing in or holding assets which are located in other countries. This bill would publicly identify these investors who, in turn, will subject them to severe penalties by their governments. In some cases, these penalties include the confiscation of assets.

SECTION 3. DEFINITIONS

(1) The term "foreign investment" should be modified to mean the ownership or control by ownership of stock or other *voting* securities, by contractural commitments, or otherwise, by a foreign investor, of % OR MORE of a business concern or property which is located wholly or substantially in the United States.

Comment.—The word "voting" is added because it indicates possible control or ownership of a business which is lacking via the ownership of a debt secur-

ity. The phrase "10% or more" is added to designate a significant level of ownership. Actually, 25% ownership would be a logical level for reporting because it is most commonly associated with control and found in many government reporting forms. We believe the word "substantially" should be made more explicit. In its present context it is too vague and indefinite, and subject to a variety of interpretations.

(2) In the definition of "foreign investor", the phrase "as defined by the Secretary" should be deleted.

Comment.—We recognize that it is common to give a Cabinet Secretary broad powers when legislation is drafted. However, in this instance and because of the implications involved, we feel that the Congress should reserve this power to themselves. It should not be too difficult to write into the law or in the Committee reports what is meant by "international agency or other organization."

(4) The definition of "property" should be amended so that only that real or personal property with a value of $1 million or more, as of the date of its acquisition, would be reported.

Comment.—While this is lower than the dollar figure found in Section 4(a)(1)(B)(ii), it is consistent with the Treasury Department's Foreign Investor Study reporting forms. In devising their forms, Treasury sought the counsel of many individuals familiar with foreign investment in the United States. It was amply demonstrated to Treasury's satisfaction that investments of less than $1 million were insignificant.

(5) The term "Secretary" should also include the Secretary of Treasury.

Comments.—The Foreign Investory Study Act (PL 93–479) directs the Secretary of Commerce to make a study of foreign direct investments in the United States and the Secretary of Treasury to make a study of foreign portfolio investment in the United States. For S. 3955 to be meaningful in future years, this portfolio information is going to be necessary. Therefore, it is only logical that the Secretary of Treasury be included since he has the information and expertise in gathering it.

SECTION 4. FOREIGN INVESTMENT REVIEW

(a)(1) We ask that the phrase "and by such other persons as the Secretary determine to be appropriate" be deleted.

Comment.—Our reason is quite simple. It shifts the burden, if the Secretary desires, from the investor to the agent of the investor. The agent in the vast majority of cases does not have the information sought and does not have the power to compel disclosure. For the agent to escape liability, he will have to turn down those foreign accounts whose principles refuse to give him this information. We suggest that the section be rewritten so that the foreign investor submit directly to the government, *at or prior to the time of the actual investment*, the information sought since he is the only one who can give accurate answers to the questions asked.

(a)(1)(A) We suggest deleting everything after "of such business concern", and raising the 5% level to 10%.

Comment.—We feel that from an administrative standpoint it will be much easier to stay with a standard 5% reporting level. If variable reporting levels are imposed, it presents a horrendous burden both in time and money for those attempting to comply with the law. The reasons for the 10% level have been previously stated.

(a)(1)(C) We are unable to interpret the phrase "on the basis of economic or other objective criteria." We suggest that it either be dropped or at the very least, be rewritten so that it spells out exactly what is meant and desired.

(a)(3) We suggest that this section be rewritten.

Comment.—It will be very difficult, if not impossible, for an agent to comply with this subsection as it is now written. We think more accurate reporting would result if the reports could be made on a monthly or quarterly basis. These reports could be submitted 15 days after the close of the month or quarter.

(b) and (d) We believe that the reporting requirements mandated by these sections, will have disasterous repercussions for U.S. businesses. The most obvious would be the dumping of large amounts of stocks and other assets. Further, we do not think it is necessary to report holdings by individual names. We suggest, therefore, that aggregate reporting by county of residence be allowed. This in turn, could be further categorized by types of investor such as individuals, banks, brokers, etc. In addition, we do not believe that the report can be completed within 120 days unless the current Treasury and Commerce studies are used.

SECTION 5. ACQUISITION OF INFORMATION

(a) We feel that this section should only apply to foreign investors.

Comments.—It is our experience that agents of foreign investors do not possess the information sought and/or do not have access to it. To illustrate, take the case of a U.S. bank with an office in Switzerland holding securities for Swiss residents. Under the laws of that country, no bank can reveal the holdings of a Swiss citizen without the consent of that citizen. If this information were revealed without consent, the bank would be closed by the Swiss government. There are many other countries with similar laws. A simpler solution would be to have all foreign investors register with the government who can then get the information directly.

(b) This section is contrary to the confidentiality provisions of PL 93–479. Both Houses of Congress took great pains in the amending process to assure confidentiality. Unless the Secretary of Treasury were to be included in S. 3955, he cannot give the Secretary of Commerce any information requested if such information were collected under the provisions of PL 93–479.

[The following information was referred to on p. 20]

U.S. SENATE,
Washington, D.C., September 18, 1974.

REVIEW OF LAWS ON DISCLOSURE AND REGULATION OF FOREIGN INVESTMENT IN SELECTED COUNTRIES

The attached review of laws regulating foreign investment in twelve countries—including the major Western industrial nations—was prepared by the Law Library of the Library of Congress for Senator Metzenbaum. The review is in three parts: (1) a summary table showing basic facts about the laws in each country reviewed; (2) a more detailed survey table for each country; (3) the original reports on each country.

For comparative purposes, detailed survey tables are included on Iran and Venezuela, two members of the Organization of Petroleum Exporting Countries.

AUSTRALIA (Commonwealth)

Prior to 1970 there were very few restrictions placed on foreign investment interests in Australia. The current concern, however, in both State and Commonwealth, has been to prevent any further unrestricted ownership encroachments and at the same time encourage the Australian owned industries.

With the exception of certain policies against foreign control of banking, broadcasting, and transportation, the general regulation of company law, including reporting and disclosure requirements, has been under the jurisdiction of the States. Only recently has the Commonwealth become involved with restrictions over foreign investments in manufacturing and industrial corporate development.[1] This need for control has been felt most keenly in the technical industries such as motor vehicle construction, chemicals, oil refining, and particularly in the mining industry where "over 60 per cent of the mining industry is likely to be under foreign control."[2]

The Companies (Foreign Take-overs) Act, 1972–1973 applies to situations where the Minister believes that foreign persons are in a position to "exercise effective control of the company," and "that control would be contrary to the national interest."[3]

A foreign take-over proposal may warrant an investigation concerning its import on national affairs. Such a proposal would be referred to an independent authority for analysis and report prior to the Minister's decision.[4] The criterion

[1] The Companies (Foreign Take-overs) Act, 1972, No. 134, as amended by the Companies (Foreign Take-overs) Act, 1973, No. 199.
[2] F. Crean, *Speech by Treasurer to the Australian British Trade Association* 7 (April 16, 1973).
[3] The Companies (Foreign Take-overs) Act, 1972–1973, § 13(2)(b).
[4] W. McMahon, *Statement by the . . . Prime Minister on 26 September 1972*, p. 6 (this was the Government's position upon introduction of the legislation to the House.

to be used in deciding whether a foreign take-over is against the national interest is:

> Whether, against the background of existing circumstances in the industry concerned, the take-over would lead, either directly or indirectly, to net economic benefits in relation to such matters as—production, prices, quality, and range of products and services—efficiency and technological change—which would be sufficient to justify the increased degree of foreign control and the particular industry that would result from the take-over.

Where the proposed take-over is thought to be not against the national interest, the following criteria will also be used:

> Whether, after the take-over, the firm concerned could be expected to follow practices consistent with Australia's interest in matters such as—exports, imports, local processing of materials produced—research and development, and industrial relations, including employee protection.
>
> Whether the take-over would have adverse consequences in terms of the Government's objectives for defense, environmental protection or regional development.
>
> In making judgments, due weight will also be given to:
>
> the extent of Australian participation in ownership and management that would remain after the take-over.
>
> the interests of shareholders of the company subject to the take-over and the attitudes of its Board of Directors.[5]

The act is concerned generally with companies with assets of over one million dollars,[6] that would come under the control of a foreign interest through the exchange or sale of shares. Where a foreign person or group would obtain 15% or more, or a combined overseas interest would gain 40% or more of the voting power in a company, it would constitute a "take-over" under the act.[7] Any transfer of a large part of ownership rights in a "potentially valuable mineral area" would also come under the act.[8]

The Minister has the power to require any company to which the act applies to furnish (a) names and addresses of the shareholders, (b) information concerning any beneficial ownership of shares, or trust agreements affecting the rights of the shares, and (c) any other information regarding a take-over offer as the Minister may require.[9] Any refusal to comply with the Minister's request carries a one thousand dollar penalty or 3 months in prison.[10] Offenses against the act are heard and determined by the Commonwealth Industrial Court.[11]

Where a person has accepted any offer for purchase of shares in a company in contravention of this act or any regulation under the act, the Minister may make an order directing that the person shall only be the owner of certain shares as specified in the order.[12] A person acting in contravention of the order is liable for a fine of two hundred dollars for each day the contravention continues.[13] If failure to comply with an order continues, the Minister may apply to the Supreme Court of the State or Territory having jurisdiction over the company's incoporation for one of the following orders: (a) restraining the voting rights of any share involved, (b) deferring any payment due on the share, (c) directing the sale of any involved shares, (d) disregarding the exercise of any voting rights attached to the shares, and (e) directing the company or other person to do or refrain from any act in order to obtain compliance with any other order under this section.[14]

AUSTRALIA (States)

There is a uniform Companies Act that has been enacted by the States of Australia. Sections 69A to 69N deal with registration requirements for "substantial shareholders" and apply to New South Wales,[15] Queensland,[16] Victoria,[17] and the Australian Capital Territory.[18]

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[5] *Id.* at p. 7.
[6] *Id.* at p. 6.
[7] Companies (Foreign Take-overs) Act, 1972–1973, § 11.
[8] *Supra* at note 4.
[9] Companies (Foreign Take-overs) Act, 1972–1973, § 20(2).
[10] *Id.* at § 20(3).
[11] *Id.* at § 21.
[12] *Id.* at § 14(1)(a) and (b).
[13] *Id.* at § 14(6).
[14] *Id.* at § 15.
[15] Companies Act, 1961–1971, §§ 69A–69N.
[16] Companies Act, 1961–1972, §§ 69A–69N.
[17] Companies Act, 1961–1971, §§ 69A–69N.
[18] Companies Ordinance, 1962–1973, §§ 69A–69N.

Shareholders who have an interest of at least 10 percent in a company,[19] must notify the company in writing, giving name, address, information concerning voting shares and any interest therein.[20] Notice must also be given of any change in interest within 14 days of the change.[21] The Commissioner may extend the time limit for non-resident shareholders.[22]

The company must keep a register of this information and the Commissioner may at any time require a copy of the register or a part of it.[23] The register is maintained at the registered office or principal place of business in the State and is open for inspection by a member of the company free of charge and by all other persons for a nominal charge.

If there is a default in compliance, each officer of the company is liable for a fine of $1,000.[24] Where a substantial shareholder fails to comply with these sections, the court may, on the Minister's application, make one or more of a number of orders, including: restraining the shareholder from the disposal of his interest in the shares or from voting his shares, or directing the company not to make payment due on the shares or register the transfer of any shares. The court may also vest any share not sold as ordered in the Commissioner.[25]

Restrictions on foreign take-overs and the resulting disclosure requirements have also been added to the State Companies Acts,[26] in fact they preceded the Commonwealth enactment.

The provisions apply to every offer involving 15 percent or more of the voting shares in a company and extend to all persons or corporations, resident or not.[27] The provisions, however, apply only to offers for shares of a company incorporated in an Australian State.

The Tenth Schedule to the acts contains the detailed information that must be included in the statement of the offeror. This information includes: 1. names, occupations, and addresses of all directors of the corporation, 2. principal activities of the corporation, 3. full particulars of the shares in the offeree company to which the offeror is entitled, 4. any other marketable securities to which offeror is entitled, 5. particulars concerning any alterations in the capital structure of the company or any subsidiary company within the past 5 years, and 6. where a natural person is involved, the name, address and occupation of that person and information as to whether he is a director or officer in any other company.[28]

If the consideration for the acquisition is cash, the statement must state the immediate source or sources from which the cash will be obtained.[29] It must also state if there is any outside agreement concerning any transfer of shares or knowledge of any change in the financial position of the company since the date of the last filed balance sheet.[30]

AUSTRIA

The flow of capital in Austria is governed by the Law Concerning Foreign Currency of 1946, as amended [1] (Devisengesetz), by the Law Concerning the National Bank of 1955 [2] and by several regulations issued by the National Bank, especially the Regulation Concerning the Reporting of Foreign Payments.[3]

All financial transactions must comply with the requirements prescribed by said provisions. Prior to entering into a transaction, parties must have a proper license from the National Bank (Sec. 14 Devisengesetz).

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[19] Companies Act, 1961–1971, § 69C.
[20] *Id.* at § 69D.
[21] *Id.* at § 69E.
[22] *Id.* at § 69J.
[23] *Id.* at § 69K.
[24] *Id.* at § 69L.
[25] *Id.* at § 69N.
[26] New South Wales: Companies (Amendment) Act, 1971, No. 61, §§ 180A–180Y and Tenth Schedule; Queensland: Companies Act Amendment Act, 1971, §§ 180A–180Y and Tenth Schedule; Victoria: Companies Act, 1971, No. 8185, §§ 180A–180Y and Tenth Schedule; South Australia: Companies Act Amendment Act, 1971–72, §§ 180A–180Y and Tenth Schedule; and Australian Capital Territory: Companies Ordinance, 1971, §§ 180A–180Y and Tenth Schedule.
[27] *Id.* at § 180B(1).
[28] Companies Acts, 1961–1971, Tenth Sched., para. 2.
[29] *Id.* at para. 4.
[30] *Id.* at para. 5(b), (c).

[1] Schuppich-Sporn, 1 *Österreichisches Recht. Devisengesetz* (Salzburg, 1968).
[2] *Das österreichische Währungs- und Devisenrecht. Das Nationalbankgesetz* 152 (Wien, 1967).
[3] *Id., Zahlungen an Ausländer und Übernahme von Geldverpflichtungen gegenüber Ausländern,* at 485.

Any violation of the Devisengesetz is subject to prosecution either by the administrative authorities or before the regular Courts, depending on the amount involved in the transaction (Sec. 23), and is subject to fines or time sentences.

Reporting on investments or applying for a license requires a full disclosure by the parties: the type of transaction, origin, amount, and payment.

In addition to domestic legislation, there are several international agreements of a general nature as well with individual countries covering either payment of mutual obligations or regulating the flow of capital.

Since the Austrian economy depends to a great extent on foreign investment, the government policy and existing law are very liberal in that respect.

BELGIUM

The most well-known restrictions and limitations on foreign investments in Belgium are enforced through the banks and in the stock market.

The restrictions are exercised by the issuance of licenses or by Government control. According to the *Twenty-Fifth Annual Report on Exchange Restrictions:*

> The external position of authorized banks is subject to control. Banks in Belgium and Luxembourg have been requested not to allow their net external debtor spot positions (in foreign currency relating to the official market plus, vis-a-vis nonresidents, in Belgian francs and Luxembourg francs in Convertible Accounts) to increase beyond specified levels. Banks have also been instructed that their overall foreign currency position relating to the official market (spot and forward combined) should normally be close to balance and should not register a substantial creditor or debtor position.[1]

In respect to the acquisition of a Belgian business, any public offer by any foreigner to buy stock in a Belgian corporation quoted on the exchange market is subject to Government permission. This policy is justified in order:

> to protect the country's interest when foreign investors are attempting to gain control over the Belgian corporations that are of vital importance to the national economy. However, there is no intention of systematically preventing foreign investors from acquiring or participating in Belgian corporations. Also the Ministry of Finance, the Ministry of Economic Affairs, and the Ministry of Regional Economy must be notified in advance of any transaction whose purpose is to sell one-third or more of the equity of an enterprise operating in Belgium, and having an equity of at least FB 100,000,000.[2]

The authorization requried for using foreign personnel as specialists, directors, and branch managers of foreign corporations may be also considered as a restriction in making business investments in Belgium, although "the obtaining of a work permit is usually a formality for persons with special skills or management talents."[3]

The enforcement of legal provisions on the stock exchange and on establishing the infringements to the Law are entrusted to the Belgian-Luxemburg Institute of Exchange.[4] The King is authorized to issue Resolutions organizing the control over all transactions regarding the goods and securities between Belgium and foreigners.[5] Infringements of the exchange regulations are punishable by imprisonment from 4 months to 2 years and by a fine of 5,000 to 1,000,000 F (Art. 5), in addition to the penalties given in Book One of the Criminal Code, with double penalties in case of recidivists and confiscation of the goods involved.

CANADA

The Foreign Investment Review Act (Can. Stat. c. 46 (1973)) received the royal assent December 12, 1973 and required promulgation within 180 days thereafter. Part I relating to the acquisition of existing Canadian business enterprises by a foreign individual, government or corporation was proclaimed in force May 8, 1974 (Foreign Investment Review Act, SI/TR/74-52, 108 Can. Gaz. Pt. 11, 1955

[1] International Monetary Fund, *Twenty-Fifth Annual Report on Exchange Restrictions* 64 (1974).
[2] Arthur Andersen and Co., *Tax and Trade Guide, Belgium* 30 (January, 1974).
[3] *Id.* at 113.
[4] Article 2, Decree-Law of October 6, 1944, *Moniteur Belge* (hereafter B.O.), October 7, 1944.
[5] Article 1, Decree-Law on Exchange Control of October 6, 1944, B.O., October 7, 1944 *see also;* the Decree of December 5, 1944.

(May 9, 1974). Part II dealing with the establishment of new businesses by foreigners will be proclaimed later after experience has been gained in administering the takeover provisions.

The Foreign Investment Review Regulations (108 Can. Gaz. Pt. 11, 1033 (March 3, 1974)) tabled by the Minister of Industry, Trade and Commerce establish the definitions of words used in the act and descriptions of the type of information which the Foreign Investment Review Agency will require companies to submit before a foreign takeover. Guidelines without the force of law have been issued by the Minister of Industry, Trade and Commerce interpreting provisions of the act regarding the investments by non-eligible persons involving movable property known as real estate or property (108 Can. Gaz. Pt. 1, (April 6, 1974)).

The purpose of Parliament in passing this act was to require the review of foreign investments in Canada by the government and to prevent such investments if they fail to offer significant benefit to Canada.

Certain definitions of terms found in the act are important in any consideration of the administration of the act. "Canadian business enterprises" are defined as businesses carried on in Canada, by (i) a corporation incorporated elsewhere, (ii) by Canadian citizens or persons ordinarily resident in Canada, (iii) by a corporation incorporated in Canada, and (iv) by any number of, or combination of, individuals and corporations in (ii) and (iii) which, either alone or jointly, in concert with one or more other individuals or corporations, control, or are in a position to control the conduct of the business (§ 3(1)). Certain exemptions are made for Crown corporations, municipal and provincial corporations referred to in paragraph 149 (1)(d) of the Income Tax Act, and business enterprises with gross assets not exceeding $250,000 and gross revenues not exceeding $3,000,000 (§ 5(1)). "New business" means a business not previously carried on in Canada by "non-eligible persons." Such "non-eligible persons" include (i) persons who are neither Canadian citizens and ordinarily resident in Canada nor landed immigrants other than those ordinarily resident in Canada for 6 years, (ii) foreign governments or political subdivisions or agencies thereof, and (iii) corporations incorporated in Canada or elsewhere that are directly or indirectly controlled through share ownership or any other manner whatever, by persons described in (i) and (ii) (§ 3(1)).

There is a presumption of classification as a "non-eligible person" for a corporation, incorporated in Canada or elsewhere, where persons, or any combination thereof described in (i) and (ii) or where the corporations incorporated outside Canada own shares of a corporation involving 25 percent or more of the voting rights in the instance of publicly traded shares, or shares of a corporation involving 40 percent or more of the voting rights in the case of non-publicly traded shares. There is an additional presumption in the case of corporations incorporated in Canada or elsewhere, where shares of corporations amounting to 5 percent or more of the voting rights are owned by any one "non-eligible person" or any one corporation incorporated outside Canada (§ 3(2)).

The Minister of Industry, Trade and Commerce, with the advice and consent of the Foreign Investment Review Agency established by this act (§ 7), is designated to do the screening of the applications from foreign investors, individuals or companies, who propose to take over a Canadian business enterprise valued at more than $250,000 or with revenues exceeding $3,000,000. Appropriate forms for filing this information may be obtained from the Foreign Investment Review Agency or from any of the regional offices of the Department of Industry, Trade and Commerce. If the foreign investor fails to send in this notice to the Agency before the investment is made or is believed to be made, the Minister may by a personal demand or registered mail require the person or any member or members of the group within a reasonable time to give notice in writing to the Agency of the proposed or actual investment in the form required by the regulations (§ 8). This demand shall contain notice of the type of proceedings that will be undertaken if the person fails to comply with the demand.

The regulations state the summary information that must be supplied, about the buyer, the Canadian business, and the purchaser's plans for the Canadian business for use by the Agency. The applicant must disclose information about (1) net worth, other businesses controlled and the manner of control, and details of capital structure, (2) identity, citizenship and occupation of directors and officers, (3) chains of control, links with other corporations or trustees and affiliates, (4) values, markets and descriptions of production for the past 3 years, (5) non-Canadian production and all sales to non-affiliated companies, (6) normal trade practices for marketing, research and development, production, finance, accounting, purchasing, management, directorships and dividends, and

(7) the degree of autonomy of affiliates, details of research and production costs, financial statements and annual reports. The information required by the four schedules contained in the regulations appear to cover every possible activity and every possible detail about the applicant or applicants and their associates. In particular Schedule 11 (7) requires the disclosure of the legal name and complete address of any non-eligible person or group of persons containing a non-eligible person and of each person in any chain or intermediaries between the applicant and the person who "ultimately controls in fact the applicant or that member, including any person who is a trustee, nominee or agent" and a disclosure of the manner in which that control is exercised.

The act provides that this information with respect to a person, business or proposed business is privileged, and no person, except as permitted by this act, may knowingly communicate any of this information to any person who is not legally entitled to such information or allow any person to inspect or have access to such information (§ 14(1)). However, the Minister may approve (a) a request in writing to the Agency by the person or persons who submitted the information for its communication to the person or authority named in the request, or (b) for any purpose relating to the administration of this act to a Minister of the Crown in right of any province or to an officer or employee of Her Majesty in right thereof (§ 14(2)). This information may only be used as evidence in a legal proceeding arising under this act (§ 14(3)(4)).

The Corporations and Labor Unions Return Act, known as Calura (Can. Rev. Stat. c. C–31 (1970)) was passed in 1962 to provide for the reporting of financial and other statistics of corporations carrying on activities in Canada authorized by law of Canada or a province to carry on business within Canada. Every corporation must file within 6 months after the end of the reporting period a return in two sections, "Section A" and "Section B," within the Dominion Statistician (§ 4). Section A requires the reporting of the corporate name, the address of the head office in Canada and if not resident in Canada, the principal place of business in Canada or a place where communications can be sent, and the date and place of incorporation, the amount of the share capital and the number of shares of each class and the addresses of the persons owning them in and out of Canada, the names, addresses and nationality of the officers and their positions. Section B should contain a financial statement showing dividends, interest on obligations, rent on real property in Canada, rent on equipment and the other expenses incident to carrying on business. Failure to send in the report constitutes an offense for which one is liable on summary conviction to a fine not exceeding fifty dollars for each day of such default (§ 7(1)).

A duplicate of Section A is kept on record in the Office of Department of Consumer and Corporate Affairs and may be inspected in the office after an application has been filed and the payment of a fee has been made (§ 14). The information in Section B is confidential, and may only be used in legal proceedings arising under this act. However, employees of the Dominion Bureau of Statistics are permitted to use the information in Section B (§ 15).

In reviewing the applications, the Minister must consider five major factors: the employment of Canadians, the participation of Canadians in the enterprise, the industrial efficiency, the local competition in the area involved, and the effect the new business will have on the practices and industrial policies of the provinces (§ 2(2)). He shall make recommendations of allowance or refusal to the Governor in Council respecting the assessment of the proposed investment including the summary of information, written undertakings and proceedings used in determining whether or not the investment is of significant benefit to Canada (§ 9). The Governor in Council has the power to determine whether he will recommend or refuse the assessment and permit the investment using the criterion that it must be of significant benefit to Canada (§§ 10, 11, 12).

However, if the Minister does not believe the benefits to Canada are significant, he may notify the applicant that he has 30 days or more if so specified to provide additional information. If no reply has been made at the end of the specified time, the Minister will submit the matter to the Cabinet with the information he does have (§ 11). Where the applicant does not receive word of a favorable decision by the Governor in Council within 60 days of filing the notice or any instruction to file more information under § 11, the Governor in Council shall be deemed to have consented to the investment (§ 13). This will guard against the government procrastinating in its decisions. Appeals lie to the superior court (§ 23).

As of the date of the proclamation of the act in April, an estimated 20 countries had voluntarily told the government that they were the objects of foreign takeover bids in response to a request made last December. Six takeovers will be reviewed by the Agency.

FRANCE

According to the provisions of Article 3 of Law No. 66–1008 of December 28, 1966. Governing Financial Relations with Foreign Countries, the Government may subject "the constitution and the liquidation of foreign investments in France" to assure the defense of national interests, to a declaration, prior authorization or control.

Foreign investments subject to special regulations are basically direct investments. The following transactions, according to the provisions of Article 3 of the Decree of January 27, 1967, are considered direct investments: [1]

(a) the purchase, creation or expansion of commercial business in the farm of [either] branches or individual enterprises;

(b) any other single or multiple transactions carried out simultaneously or successively which permit one or several persons to acquire or increase their control of a company engaged in industrial, agricultural, commercial, financial or realty activities, regardless of its control.

However, participation which does not exceed 20 percent of the capital of a company whose securities are quoted on a stock exchange shall not be considered as a direct investment.

Foreign investments in France are subject to the control of the Minister of Finance and Economic Affairs. The declarations pertaining to the constitution of a direct investment must be submitted by: either individuals or public or private legal entities having their habitual residence or a registered office in a foreign country, or by French companies under direct or indirect foreign control or by the establishments of foreign companies in France. The preliminary declaration for direct investment must supply the following information, according to the established form:

Preliminary Declaration or Direct Investment in France

Declaration made in the execution of Decree No. 67–78 of January 27, 1967 (J.O. of January 29, 1967)

I. Designation of the investor(s)

1. Name
2. Nationality (for individuals)
3. Address

II. Additional information on investor(s) an individuals or legal entities who control him (them), if such is the case

III. Designation of the enterprise or company in France in which investment is to be made

Name
Form of the enterprise or company
Kind of activities
Address
Identification number in I.N.S.E.E. [Institut National de la Statistique et des Études Économiques]

IV. Modalities of investment

A. Kind of and the amount [involved in] the operations. Administrative and financial information on the enterprise in France in which the investment is made

B. Modalities of the financial settlement in cash or by compensation:

1. Settlement abroad
2. Settlement in France
   (a) without loan
   (b) by funds borrowed in France
   Designation of the creditor
   Amount of the loan—term—interests—
3. Settlement by compensation (specify the type counterpart)
4. Other modalities (specify)

C. Term of realization of proposed investment

V. Grounds and effects of proposed investment

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[1] *Journal officiel* (hereafter J.O.) December 28, 1966.

The undersigned declarer(s) has (have) taken note:

That the projected investment can be realized only under conditions and terms declared, that any modification, any kind whatsoever, must be the subject of a new preliminary declaration submitted to the Treasury Service:

That he must give account to the Treasury Service:

Of the legal realization of the operation and eventually of the preceding settlements within twenty days reckoned from the date of that realization;

Of all further settlements, within twenty days reckoned from the date of each of these settlements;

That in the case of the renunciation of the project pertaining to the present preliminary declaration, the Treasury Service must be notified by letter as soon as possible.

Date

Signatures

Names, qualifications, and addresses of the declarers: [2]

According to Robert B. Dickie,[3] within 2 months after the receipt of the declaration, the Minister of Finance must choose one of the following four alternatives: he may:

(1) Waive the right to request postponement—this amounts to an authorization;

(2) Commence discussions with the declaring party with a view to a modification of the proposal;

(3) Request that the proposed investment be postponed—this amounts to a denial of authorization until the proposed investment is appropriately modified or the Ministry of Finance changes its opinion;

(4) Take no action—this amounts to authorization.

The control of the transfer of industrial property rights is different, as stated by Dickie:

> A slightly different type of control is exercised by the French Government over the transfer of industrial property rights, including patents and trademarks, and over the transfer of scientific, technical assistance, or know-how rights. Agreements involving the transfer of such rights from a foreign person to an individual or legal entity whose domicile or head office is in France must be submitted to the Ministry of Industry.
>
> The Ministry of Industry then studies the agreement, with an eye toward preventing French reliance on American technology. The French contracting party might then be contacted and advised to procure the industrial know-how from a French source. The Ministry has no power to block the agreement but must submit its opinion of the agreement to the French contracting party. The opinion must also be delivered to the Ministry of Finance, including its department of Direct Taxes and of Customs and Indirect Taxes, and where appropriate, to the Ministry of National Defense and to the Ministry in charge of scientific research and atomic and space matters.
>
> Other than being reported to the Ministry of Finance, there is no sanction for executing an agreement looked upon with disfavor by the Ministry of Industry. This sanction, however, might not be illusory in view of the possible leverage of the Department of Direct Taxes, especially in contesting deductibility of royalty payments.[4]

Insofar as foreign investments are concerned, the attitude of the French Government is determined by the following factors:

> . . . At the present the Government favors investments which will: (1) make substantial exports, thus helping France's trade balance, (2) make a new product available, (3) create new employment, (4) transfer technological know-how to France, (5) provide a catalyst for desired changes among French held firms, and (6) not involve American domination of an important French industry.[5]

Nonobservance of the provisions of Law No. 66–1008 of December 28, 1966, Governing Financial Relations with Foreign Countries entails severe penalties: Imprisonment from 1 to 3 months, confiscation of the *corpus delicti* and a fine of a minimum of one half or a maximum of double the sum in violation (Art. 5–I).

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[2] R. B. Dickie, *Foreign Investment: France A Case Study* 116–120 (Leiden, 1970). *See Appendix* for French text.

[3] *Id.* at 29–30.

[4] *Id.* at 31–32.

[5] *Id.* at 7.

The Law does not make any distinction between nationals and foreigners; it simply states that: "Anyone who contravene the measures specified in Art. 3 . . ."

FEDERAL REPUBLIC OF GERMANY

I. Legislative Sources

Foreign economic relations of the Federal Republic of Germany in general and investments in the Federal Republic of Germany by foreigners in particular are governed by the Law on Foreign Economic Relations (Aussenwirtschaftsgesetz [hereafter AWG]) of April 28, 1961 (*Bundesgesetzblatt* [hereafter BGBl.] I: 481) as amended for the last time by Article 187 of the Introductory Law to the Criminal Code of March 2, 1974 (BGBl. I: 590) which amendment will not enter into force until January 1, 1975; and by the Decree on the Implementation of the Law on Foreign Economic Relations (Aussenwirtschaftsverordnung [hereafter AWV]) of December 30, 1966, in the version of the Proclamation of August 31, 1973 (BGBl. I: 1069, as amended by the 28th Decree to Amend the AWV of August 24, 1973 (BGBl, I: 1061); by the 29th Decree to Amend the AWV of December 19, 1973 (BGBl, I: 1951); the 30th Decree to Amend the AWV of January 17, 1974 (BGBl. I: 49); and the 31st Decree to Amend the AWV of January 30, 1974 (BGBl. I: 122).

II. Reporting Obligation

The Federal Government is authorized by virtue of Section 26(2) of the AWG to issue a decree which would require that legal transactions and actions in foreign economic relations, especially the claims and obligations arising therefrom, as well as capital investments and the making and receiving of payments, be reported and documented. This authorization may be used if it becomes necessary in order to establish the necessity of imposing, removing, or relaxing restrictions; to balance the payments of the Federal Republic; to safeguard the interests of its economic policy; to make it possible to fulfill international agreements concluded by the Federal Republic of Germany; or to implement the recently imposed economic restriction of mandatory deposits.

The Federal Government has invoked this authorization in the AWV and introduced the reporting obligation into almost every phase and kind of foreign economic relations.

The obligation to report rests with those who are residents of the Federal Republic of Germany and who are parties to the legal transactions and actions.

Reports must be filed with the German Federal Bank (Deutsche Bundesbank) through the central banks of the länder and branch offices thereof.

III. Restrictions

The AWG established that restrictions may be imposed on the economy only if conditions set forth by the law exist. These conditions are defined in Sections 5–7 of the AWG which provide that restrictions may be imposed if fulfillment of international agreements, protection of the German economy against the intrusion of damaging influences from abroad, or the interests of the national security of foreign policy so warrant.

Restrictions permissible under the AWG may consist of licensing requirements or the prohibition of certain legal transactions. Recently an amendment to the AWG introduced another restriction, the mandatory cash deposit. According to this measure, resident borrowers, including resident branch offices and subsidiaries of nonresident enterprises, must deposit a certain portion of any direct or indirect loan or credit accorded to them by a nonresident in an interest-free account with the German Federal Bank.

Because the AWG is only a framework for authorizing the Federal Government to impose the restrictions defined by the AWG if the conditions set forth in the law exist, it does not mean that such restrictions are actually imposed by the Federal Government.

The following table shows the permissible restrictions and also indicates whether the Federal Government has availed itself of the restriction:

Not imposed:

Acquisition of real property or interests in real property by nonresidents in Germany; Aquisition for consideration of enterprises, corporations, in-

dustrial establishments, or parts thereof in Germany by a nonresident; Aquisition of ships registered in Germany from residents by nonresidents for consideration.

Licensing required:

Purchase by nonresidents of treasury bills, treasury notes bearing no interest, governmental food storage agency bills, bills of exchange endorsed by a German bank drawn on a resident and payable within Germany, and bills of exchange issued by a resident and endorsed by a German bank; bills of exchange issued by a resident and accepted by a German bank; German bearer or order bonds from residents; Receipt of interest by nonresidents on accounts with German banks.

Imposed: Mandatory cash deposit

Licenses required by the law are, as a matter of policy, never granted, thus it may be said that a licensing requirement is tantamount to prohibition.

IV. Penalties

The AWG authorizes the Federal Government to determine which violations of the law should constitute a criminal act punishable by imprisonment up to 1 year, and/or by a fine, and which, less significant violations, should constitute only a contravention punishable by a fine.

In Section 70 the AWV defines several criminal acts, but these definitions refer only to the export and import business and are not concerned with legal transanctions concerning the investment market.

There are, however, several contraventions established in Section 71 of the AWV which are charged to persons who conclude legal transactions in violation of the restrictions included in the AWG and made effective by the AWV. Similarly, contraventions may be charged against those who violate an obligation to report. There is no distinction made whether the violator is a resident or nonresident; however due to the specific circumstances, it is obvious that a fine is difficult to collect from a nonresident.

The AWG also permits the seizure of the object to which the criminal act or contravention relates, or which was used in the commission of the act

ITALY

I. General Remarks and Survey of Legislation

The major legislative act in force governing foreign investments in Italy is Law No. 43 of February 7, 1956, and the regulations enacted pursuant to this act. In addition, according to the needs and the economic policy of the country, several ministerial regulations have been issued.

It should be borne in mind that the main purpose of the above Law was to encourage foreign investment in Italy in order to help the economy recover from the effects of World War II and to stimulate industrial development in an attempt to help Italy reach the level of the other, more advanced Western European states. For a period of over ten years, the policy ensuing from this Law greatly increased the country's rate of industrialization. This development has been basically channeled through government-controlled corporations or in conjunction with them, and has made Italy a leader in setting economic trends, either directly or indirectly, through public corporations.

Today, however, due to increasing economic difficulties in Italy, such an inflation, a permanent clash between industry and labor, with the resulting strikes, and financial scares, there has been a tightening of tax laws that has induced not only foreign investors, but Italian investors as well, to look abroad, despite the existence of the 1956 Law which, as mentioned above, gives favorable treatment to foreign investors.

II. Summary of the 1956 Law and Related Legislation

1. There are no restrictions on the flow of foreign investments in Italy.

2. The Italian Government requires disclosure of such foreign investments in the sense that such investments under the law are divided into two major categories: productive and non-productive investments. The first are favored over the second group because such investments are viewed to be more in the interest

of the Italian national economy, and the dividends and profits as well as the proceeds from such investments or from the liquidation thereof may be freely remitted abroad. Dividends and profits from the second group may be remitted abroad without any hindrance provided they do not exceed the 8 percent annum of the capital invested. The proceeds from the liquidation of such investments may also be remitted abroad, provided that such proceeds do not exceed the amount originally invested and that at least 2 years have elapsed from the date of original investment (Arts. 1 and 2 of the Law of 1956).

3. Reporting and disclosure of the above-mentioned foreign investments are made through Italian public agencies according to their specifications. If the matter concerns only the so-called non-productive investments under the meaning of the Italian law, reporting or disclosure must be made through the banks, brokerage firms, agents, etc., involved in such operations to the Italian Office of Exchange (Ufficio Cambio), a government agency.

In case of productive foreign investments, such reporting and disclosure must take place via filing with the Italian Treasury (Ministero del Tesoro).

4. As a rule, there is no restrictive policy on any inward movement of foreign investment, except that due to the present great Italian economic difficulties, a number of regulations have been enacted imposing stricter controls for remittances abroad, although these do so without invalidating the basic principles laid down by Law No. 43 of 1956.

5. Special penal legislation and an entire chapter of the Italian Criminal Code are devoted to offenses committed against the national economy, industry, and trade, and call for imprisonment and fines for anyone who damages the Italian national economy or is involved in such unlawful acts.

In addition, Article 7 of Law No. 43 of 1956 expressly states that violations may result in confiscation and pecuniary sanctions which could be as high as three times the invested amounts, not to mention the other penalties provided by special legislation and the Italian Criminal Code which may apply (Law No. 794 of May 1938; Law No. 1928 of December 5, 1938; Law No. 211 of March 2, 1948).[1]

JAPAN

Under the Foreign Investment Law of 1950, foreign investors are required to obtain prior validation of proposed long-term investments, these being investments which are redeemable more than one year later.

Application forms for validation of the purchase of stocks are prescribed by the Regulation Concerning the Enforcement of the Foreign Investment Law. They contain disclosure requirements and are available from the Bank of Japan.

On the "Application for Validation of Stock" (Form No. 2) the prospective foreign investor must include particulars, such as his name, address, nationality, and type of business; the name of the company issuing the stock; the capital of the investing company; manner of acquisition of the shares, kind of compensation, and method of payment; the plan according to which the investment will be made; and the manner in which the investment will benefit the issuing company.

When a prospective foreign investor intends to file an application through his agent (a securities dealer or foreign exchange bank), he must have his agent obtain special authorization from the competent Minister. His agent is required to file an "Application for Validation of Acquisition of Stock" (Form No. 2–2), in which he must state the following particulars: the true name of the investor and his nationality, the name of the agent, the name of the issuing company, the number of shares to be acquired, the estimated date of acquisition, the kind of currency to be offered in payment, and the method of payment.

The following documents also must be submitted: (1) certified proof of the foreigner's signature and nationality; (2) a statement of the issuing company's history, organization, and sales, its future plans for expansion and raising funds, and an explanation of the effect the proposed investment is likely to have on other companies in the field; and (3) proof of the power of attorney where an agent represents the applicant.

If the competent Ministry, upon review of the application, desires further information, it usually contacts the local representative of the prospective foreign

[1] For more detailed information, *see Common Market Reporter, Doing Business in Europe, Italy* 25,601 f (1974) *and* International Monetary Fund, *Twenty-Fifth Annual Report on Exchange Restrictions* 234 f (1974).

investor. Informal talks between the investor or his representative and the appropriate Ministry personnel often take place to clarify any issue or difficulties raised by the application.

Any person who fails to obtain validation of his purchase of stocks as a foreign investor is subject to penal servitude not exceeding three years and a fine not exceeding 300,000 yen.

Under the Foreign Investment Law (Article 24), a foreign investor whose application for validation of the purchase of stocks has been approved, is required to file a report (Form No. 12) with the competent Minister or the Minister of Finance within 30 days from the day upon which he acquired stock or proprietary interest in a Japan concern. When it is deemed necessary, the competent Minister may request additional information concerning the acquisition of stock from the foreign investor, the issuing company, and other interested parties. The original report by the foreign investor must include the following particulars: the name, address, nationality, and occupation of the foreign investor; details about the authorizing validation (its date, number, amount, etc.); and details about the actual purchase (the date, number of shares, their value, etc.). If an agent has acquired the stock for the foreign investor, he must file Form No. 12–2.

Any person required to make these reports who fails to make a report or makes a false report shall be punished with penal servitude not exceeding six months or a fine not exceeding 50,000 yen.

Japanese law does not require that the Japanese Government publish or disclose the nature and scope of foreign investment in Japan.

THE REVIEW PROCESS

The applicant submits his application form and attached documents to the Bank of Japan, which refers them to the Ministry of Finance and other agencies, one of which is almost always the Ministry of International Trade and Industry. The decision to validate or reject the application for foreign investment is made by the competent Ministers. Except in cases of minor importance, the Ministers are requested to consult the Foreign Investment Council (attached to the Ministry of Finance) before making decisions.

In granting approval, the Minister shall give priority to the following industries: (1) those contributing to the improvement of Japan's international balance of payments, (2) those contributing to the development of essential industries or public enterprises, and (3) those necessary to the perpetuation of existing technological assistance contracts involving essential industries or public enterprises.

With respect to the establishment of joint ventures in Japan and other such direct investments, the introduction of capital will as a rule be validated, unless it poses a serious problem affecting the national economy.

Inward investments or technical assistance contracts which are unfair, or infringe Japanese laws and regulations, or are concluded or modified as a result of fraud, menace or other forms of illegal pressure, shall not be validated.

For the foreign investor who is not satisfied with the outcome of his application, the Law (Article 20) establishes a procedure for holding a hearing within the Ministry at which the investor may bring his objections. However, this hearing is considered an informal, non-judicial type of proceedings.

RESTRICTIONS ON FOREIGN INVESTMENT

Within the framework of the Foreign Investment Law, the Japanese Government adopted a new liberalization policy, effective May 1, 1973, toward inward foreign investment. The new policy allows 100 percent foreign investment in both new and existing companies, with significant exceptions. The new policy is considerably less restrictive than the previous policy of 1971, which limited foreign investment to 50 percent in new companies and less than 25 percent (a maximum of 10 percent per individual foreign investor) in existing companies, with certain exceptions.

Under the new policy of 1973, the Japanese Government grants "automatic approval" of investments of up to 100 percent in new companies (direct investment) and existing companies (investment for participation in management and portfolio investment), with the exception of proposed investments in the following five industries: (1) agriculture, forestry, and fishing; (2) mining (at present a 50 percent interest is eligible for "automatic approval"); (3) petroleum, includ-

ing refining; (4) leather and leather products; and (5) retail trade. Investment applications falling within the above 5 industries are subject to "case-by-case screening" by the Japanese Government, which is tantamount to rejection. However, with regard to the last item, the Japanese Government agreed in principle to approve 100 percent American-owned retail operations, provided that the number of stores opened by any one U.S. retail organization does not exceed 11 and that such stores sell only U.S. and U.S. brand-name products.

Further, in 17 other industries full 100 percent foreign investment will not be permitted until the date indicated below. Until these dates foreign investment will be limited to a maximum of 50 percent.

Industry	*Liberalization date*
1. Meat products	Apr. 30, 1975
2. Fruit juice or fruit beverage manufacturing	Apr. 30, 1976
3. Tomato products	Apr. 30, 1975
4. Foodstuff manufacturing	Apr. 30, 1975
5. Pre-cooked foods industry for wholesale distribution to restaurants, etc	Apr. 30, 1975
6. Manufacturing of or wholesale trade in apparel	Apr. 30, 1975
7. Manufacturing of drugs and medicines or agricultural chemicals	Apr. 30, 1975
8. Manufacturing of sensitized photographic materials	Apr. 30, 1976
9. Ferro-alloy products	Apr. 30, 1975
10. Hydraulic equipment manufacturing	Apr. 30, 1975
11. Packaging and packing machinery industry	Apr. 30, 1975
12. Manufacturing, sales or leasing of electronic computers	[1] Nov. 30, 1975
13. Information processing industry (including the software industry)	Mar. 31, 1976
14. Electronic precision instruments industry	Apr. 30, 1975
15. Integrated circuits manufacturing	Nov. 30, 1974
16. Phonographic records industry	Apr. 30, 1975
17. Real estate business	Apr. 30, 1975

The processed cheese manufacturing industry is being liberalized on the condition that domestic natural cheese accounts for more than one-third of the raw materials used in the manufacturing of the product.

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[1] The acquisition of shares in a newly established company which is engaged in the manufacturing, selling, or leasing of electronic computers (item No. 12) will subject to case-by-case screening until it is 50 percent liberalized on Aug. 1, 1974; on Dec. 1, 1975, it will be 100 percent liberalized. The acquisition of shares in a newly established company engaged in information processing including software (item No. 13), will be subject to case-by-case screening until it is 50 percent liberalized on Dec. 1, 1974; on Apr. 1, 1976, it will be 100 percent liberalized.

RESTRICTIONS ON, AND DISCLOSURE OF, INVESTMENT OF FOREIGN CAPITAL IN VARIOUS COUNTRIES

SUMMARY SHEET

NA - Not applicable

COUNTRY Australia

Restrictions:	Yes XXX No ☐
Types of restrictions:	NA ☐ All shareholders of 10% or more of co. shares must give notice and have pertinent information placed on a public register. All persons or corporations desiring to obtain 15% or more of a co.'s voting shares must receive approval of the Minister or Commissioner and supply further information
Rationale for restrictions:	NA ☐ National interest and strengthening of Australian industrial ownership
Disclosure requirements:	Yes XXX No ☐
Nature of reporting requirements:	NA ☐ "Substantial shareholders" must give notice and information to companies Takeover offers require disclosure statements (Commwealth & State)
Reported information availability:	1) kept confidential ☐ 2) completely disclosed XX (Substantial shareholders notice is open to public) 3) partially disclosed ☐
Steps taken to ascertain true name of investor(s):	None ☐ Yes: Names of other interest holdings plus any outside agreements must be disclosed in takeover offers
Foreign investments reviewed, if so, by whom:	NA ☐ By: Yes XXX Commonwealth: Minister & Independent Authority States: Commissioner
Penalties for resident sellers:	Yes XXX No ☐
Penalties for non-resident buyers:	Yes XXX No ☐
Types of penalties (criminal and/or civil)	NA ☐ (includes fines of $1,000 or 3 months in prison) Fines and imprisonment (Non-resident shareholders may have shares confiscated and no payments on dividends)
Past practices:	1) more restrictive ☐ 2) less restrictive XXX 3) basically the same ☐ 4) NA ☐
Current status of the law (i.e., new legislation pending, changes in the near future unlikely, etc.)	NA ☐ The laws are very recent. There will probably be forthcoming procedural regulations. It is too soon to see the direct results of these new restrictions.

RESTRICTIONS ON, AND DISCLOSURE OF, INVESTMENT OF FOREIGN CAPITAL IN VARIOUS COUNTRIES

SUMMARY SHEET

NA - Not applicable

COUNTRY Austria

Restrictions:	Yes ☒ No ☐
Types of restrictions:	NA ☐ License from National Bank
Rationale for restrictions:	NA ☐ On a case to case basis
Disclosure requirements:	Yes ☒ No ☐
Nature of reporting requirements:	NA ☐ Type of transaction, origin, amount and payment information
Reported information availability:	1) kept confidential ☒ 2) completely disclosed ☐ 3) partially disclosed ☐
Steps taken to ascertain true name of investor(s):	None ☐ Yes: Application requires full disclosure
Foreign investments reviewed, if so, by whom:	NA ☐ Yes ☒ By: Ministry of Finance and National Bank
Penalties for resident sellers:	Yes ☒ No ☐
Penalties for non-resident buyers:	Yes ☒ No ☐
Types of penalties (criminal and/or civil)	NA ☐ Fines and imprisonment (criminal and civil) No differentiation made between residents and nonresidents
Past practices:	1) more restrictive ☐ 2) less restrictive ☐ 3) basically the same ☒ 4) NA ☐
Current status of the law (i.e., new legislation pending, changes in the near future unlikely, etc.)	NA ☐

RESTRICTIONS ON AND DISCLOSURE OF INVESTMENT OF FOREIGN CAPITAL IN VARIOUS COUNTRIES

SUMMARY SHEET

NA - Not applicable

COUNTRY Belgium

Restrictions:	Yes [X] No [ ]
Types of restrictions:	NA [ ] License and government control; government permission required by foreigners who desire to buy stock in a Belgian corporation quoted on the exchange market
Rationale for restrictions:	NA [ ] To protect the country's interests
Disclosure requirements:	Yes [ ] No [X]
Nature of reporting requirements:	NA [X]
Reported information availability:	1) kept confidential [ ] 2) completely disclosed [ ] 3) partially disclosed [ ]
Steps taken to ascertain true name of investor(s):	None [X] Yes:
Foreign investments reviewed, if so, by whom:	NA [X] By: Yes [ ]
Penalties for resident sellers:	Yes [X] No [ ]
Penalties for non-resident buyers:	Yes [ ] No [ ]
Types of penalties (criminal and/or civil)	NA [ ] Criminal; fines, imprisonment, and possible confiscation of goods
Past practices:	1) more restrictive [ ] 2) less restrictive [X] 3) basically the same [ ] 4) NA [ ]
Current status of the law (i.e., new legislation pending, changes in the near future unlikely, etc.)	NA [ ]

RESTRICTIONS ON, AND DISCLOSURE OF, INVESTMENT OF FOREIGN CAPITAL IN VARIOUS COUNTRIES

SUMMARY SHEET

NA - Not applicable

COUNTRY Bermuda *

Restrictions:	Yes XXX ☐ No ☐
Types of restrictions:	NA ☐ Banks & corporations must be locally incorporated & licensed with 60 percent Bermudian directors and 60 percent of the voting shares owned by Bermudians
Rationale for restrictions:	NA ☐ Local control
Disclosure requirements:	Yes XXX ☐ No ☐
Nature of reporting requirements:	NA ☐ Applicants for purchase of shares or parties to the transfer of shares must specify if they are Bermudian. Changes in citizenship must also be reported. This information goes to the directors of the corporation
Reported information availability:	1) kept confidential ☐ 2) completely disclosed ☐ 3) partially disclosed ☐ N/A
Steps taken to ascertain true name of investor(s):	None ☐ Annual reports filed with the Member list the number of shares beneficially owned by Bermudians. In addition, burden is on the corporation to make Yes: a prima facie showing that it is owned by the proper percentage of Bermudians
Foreign investments reviewed, if so, by whom:	NA ☐ By: Member of the Executive Council Yes XXX
Penalties for resident sellers:	Yes XXX ☐ No ☐ Fines
Penalties for non-resident buyers:	Yes XXX ☐ No ☐ Divestiture, or forfeiture to Crown
Types of penalties (criminal and/or civil)	NA ☐ Divestiture to 40 percent level or forfeiture of shares to the Crown. Fines: for knowingly giving false information and for corporate officers who allow over 40 percent foreign control
Past practices:	1) more restrictive ☐ 2) less restrictive ☐ 3) basically the same ☐ 4) NA XXX
Current status of the law (i.e., new legislation pending, changes in the near future unlikely, etc.)	NA XXX

* The date of report (Law Library Study 74-329) from which the above information was compiled is October, 1973

RESTRICTIONS ON, AND DISCLOSURE OF, INVESTMENT OF FOREIGN CAPITAL IN VARIOUS COUNTRIES

SUMMARY SHEET

NA - Not applicable

COUNTRY Canada

Restrictions:	Yes [X] No [ ]
Types of restrictions:	NA [ ] Investment must be determined to be of significant benefit to Canada in instances of foreign investments in companies with gross assets of $250,000 and gross revenues of $3,000,000 or more
Rationale for restrictions:	NA [ ] High level of foreign control of Canadian industry affects the ability of Canadians to maintain effective control of their economic environment
Disclosure requirements:	Yes [X] No [ ]
Nature of reporting requirements:	NA [ ] Schedules in notice to Foreign Review Agency Schedules A and B to Dominion Bureau of Statistics
Reported information availability:	1) kept confidential [ ] 2) completely disclosed [ ] 3) partially disclosed [X]
Steps taken to ascertain true name of investor(s):	None [ ] Yes: Notice to Foreign Investment Review Agency to disclose the person who "ultimately controls in fact the applicant or that member, including any person who is trustee, nominee, or agent"
Foreign investments reviewed, if so, by whom:	NA [ ] Yes [X] By: Foreign Investment Review Agency and Minister
Penalties for resident sellers:	Yes [ ] No [X]
Penalties for non-resident buyers:	Yes [X] No [ ]
Types of penalties (criminal and/or civil)	NA [ ] Criminal fine and/or imprisonment or both
Past practices:	1) more restrictive [ ] 2) less restrictive [X] 3) basically the same [ ] 4) NA [ ]
Current status of the law (i.e., new legislation pending, changes in the near future unlikely, etc.)	NA [ ] Waiting for the promulgation of Part II, §6 of the Foreign Investment Review Act regulating investment in new businesses, probably in six months or as soon as experience is gained from the operation of Part I

RESTRICTIONS ON AND DISCLOSURE OF INVESTMENT OF FOREIGN CAPITAL IN VARIOUS COUNTRIES

SUMMARY SHEET

NA - Not applicable

COUNTRY France

Restrictions:	Yes [X] No [ ]
Types of restrictions:	NA [ ] Preliminary declarations, control by the Minister of Finance
Rationale for restrictions:	NA [ ] Defense of national interest
Disclosure requirements:	Yes [X] No [ ]
Nature of reporting requirements:	NA [ ] Preliminary declaration
Reported information availability:	1) kept confidential [X] 3) partially disclosed [ ] 2) completely disclosed [ ]
Steps taken to ascertain true name of investor(s):	None [ ] Filing of declaration Yes:
Foreign investments reviewed, if so, by whom:	NA [ ] By: Minister of Finance Yes [X]
Penalties for resident sellers:	Yes [X] No [ ]
Penalties for non-resident buyers:	Yes [X] No [ ]
Types of penalties (criminal and/or civil)	NA [ ] Criminal No differentiation made between residents and nonresidents
Past practices:	1) more restrictive [ ] 2) less restrictive [ ] 3) basically the same [X] 4) NA [ ]
Current status of the law (i.e., new legislation pending, changes in the near future unlikely, etc.)	NA [ ]

RESTRICTIONS ON, AND DISCLOSURE OF, INVESTMENT OF FOREIGN CAPITAL IN VARIOUS COUNTRIES

SUMMARY SHEET

NA - Not applicable

COUNTRY Germany, Federal Republic of

Restrictions:	Yes [X] No [ ]
Types of restrictions:	NA [ ] 1) licensing; 2) prohibition; 3) mandatory cash deposits
Rationale for restrictions:	NA [ ] 1) fulfillment of international agreement 2) protection of economy against damaging influence 3) interest of national security or foreign policy
Disclosure requirements:	Yes [X] No [ ]
Nature of reporting requirements:	NA [ ] Report
Reported information availability:	1) kept confidential [X] 3) partially disclosed [ ] 2) completely disclosed [ ]
Steps taken to ascertain true name of investor(s):	None [X] Yes:
Foreign investments reviewed, if so, by whom:	NA [ ] By: Deutsche Bundesbank Yes [X]
Penalties for resident sellers:	Yes [X] No [ ]
Penalties for non-resident buyers:	Yes [X] No [ ]
Types of penalties (criminal and/or civil)	NA [ ] Criminal
Past practices:	1) more restrictive [ ] 2) less restrictive [ ] 3) basically the same [X] 4) NA [ ]
Current status of the law (i.e., new legislation pending, changes in the near future unlikely, etc.)	NA [X]

RESTRICTIONS ON, AND DISCLOSURE OF, INVESTMENT OF FOREIGN CAPITAL IN VARIOUS COUNTRIES

SUMMARY SHEET

NA - Not applicable

COUNTRY Italy

Restrictions:	Yes ☐ No ☒
Types of restrictions:	NA ☒
Rationale for restrictions:	NA ☒
Disclosure requirements:	Yes ☒ No ☐
Nature of reporting requirements:	NA ☐ Through the Office of Exchange or through the Treasury
Reported information availability:	1) kept confidential ☒ 3) partially disclosed ☐ 2) completely disclosed ☐
Steps taken to ascertain true name of investor(s):	None ☒ Yes:
Foreign investments reviewed, if so, by whom:	NA ☐ By: Office of Exchange , the Treasury, or Ministry of Foreign Affairs Yes ☒
Penalties for resident sellers:	Yes ☒ No ☐
Penalties for non-resident buyers:	Yes ☒ No ☐
Types of penalties (criminal and/or civil)	NA ☐ Criminal and civil (Fines and imprisonment and possible confiscation) No differentiation made between residents and nonresidents
Past practices:	1) more restrictive ☐ 2) less restrictive ☐ 3) basically the same ☒ 4) NA ☐
Current status of the law (i.e., new legislation pending, changes in the near future unlikely, etc.)	NA ☐

RESTRICTIONS ON, AND DISCLOSURE OF, INVESTMENT OF FOREIGN CAPITAL IN VARIOUS COUNTRIES

SUMMARY SHEET

NA - Not applicable

COUNTRY JAPAN

Restrictions:	Yes ☒ No ☐
Types of restrictions:	NA ☐ Prior government validation and percentage restrictions
Rationale for restrictions:	NA ☐ Protecting industries not yet strong enough to compete internationally as well as precluding the possibility of foreign participation in or domination of basic and important industries.
Disclosure requirements:	Yes ☒ No ☐ Disclosure requirements are part of application forms for validation of acquisition of stock. If validated, there is a separate reporting requirement
Nature of reporting requirements:	NA ☐
Reported information availability:	1) kept confidential ☒ 2) completely disclosed ☐ 3) partially disclosed ☐
Steps taken to ascertain true name of investor(s):	None ☐ Yes: Agent must use a different application form in which he must state the true name of the investor; proof of the power of attorney must be attached to the application
Foreign investments reviewed, if so, by whom:	NA ☐ Yes ☒ By: The Foreign Investment Council, the Ministry of Finance, and other competent Ministries.
Penalties for resident sellers:	Yes ☒ No ☐
Penalties for non-resident sellers:	Yes ☒ No ☐
Types of penalties (criminal and/or civil)	NA ☐ Criminal Fine and imprisonment No differentiation between residents and nonresidents
Past practices:	1) more restrictive ☐ 2) less restrictive ☒ 3) basically the same ☐ 4) NA ☐
Current status of the law (i.e., new legislation pending, changes in the near future unlikely, etc.)	NA ☐ Changes in the near future unlikely

SUMMARY SHEET

NA - Not applicable

COUNTRY the Netherlands

Restrictions:	Yes [X] No [ ]
Types of restrictions:	NA [ ] Licenses
Rationale for restrictions:	NA [ ] Capital market policy; as far as borrowing is concerned, either to control the contracting of a foreign debt by local authorities or for reasons of monetary and reserve policies
Disclosure requirements:	Yes [X] No [ ]
Nature of reporting requirements:	NA [ ] Reporting of transactions of f1000, or more
Reported information availability:	1) kept confidential [ ] 2) completely disclosed [ ] 3) partially disclosed [ ] NA /X/
Steps taken to ascertain true name of investor(s):	None [ ] NA /X/ Yes:
Foreign investments reviewed, if so, by whom:	NA [ ] By: Netherlands Bank Yes [X]
Penalties for resident sellers:	Yes [X] No [ ]
Penalties for non-resident buyers:	Yes [X] No [ ]
Types of penalties (criminal and/or civil)	NA [ ] Imprisonment, fines, and additional punishments. No differentiation made between residents and nonresidents
Past practices:	1) more restrictive [ ] 2) less restrictive [ ] 3) basically the same [ ] 4) NA [X]
Current status of the law (i.e., new legislation pending, changes in the near future unlikely, etc.)	NA [ ] New legislation has been pending for a long time

RESTRICTIONS ON AND DISCLOSURE OF INVESTMENT OF FOREIGN CAPITAL IN VARIOUS COUNTRIES

SUMMARY SHEET

NA - Not applicable

COUNTRY Sweden

Restrictions:	Yes ☒ No ☐
Types of restrictions:	NA ☐ Restrictions on foreign ownership of real estate, mines, and corporations owning real estate. Permit from state is required
Rationale for restrictions:	NA ☐ National interest
Disclosure requirements:	Yes ☒ No ☐
Nature of reporting requirements:	NA ☐ Affidavit to the Riksbank
Reported information availability:	1) kept confidential ☐ 2) completely disclosed ☒ 3) partially disclosed ☐
Steps taken to ascertain true name of investor(s):	None ☐ Law re: applications prohibits use of straw men. Yes:
Foreign investments reviewed, if so, by whom:	NA ☐ Yes ☒ By: Applications for permits under the Currency Exchange Control Statute are made to the Riksbank or a bank authorized to act on its behalf
Penalties for resident sellers:	Yes ☒ No ☐
Penalties for non-resident buyers:	Yes ☒ No ☐
Types of penalties (criminal and/or civil)	NA ☐ Criminal and civil (imprisonment and possible forfeiture)
Past practices:	1) more restrictive ☐ 2) less restrictive ☐ 3) basically the same ☒ 4) NA ☐
Current status of the law (i.e., new legislation pending, changes in the near future unlikely, etc.)	NA ☒

RESTRICTIONS ON, AND DISCLOSURE OF, INVESTMENT OF FOREIGN CAPITAL IN VARIOUS COUNTRIES

SUMMARY SHEET

- - : applicable

COUNTRY United Kingdom

Restrictions:	Yes XX No ☐
Types of restrictions:	NA ☐ Asking permission before conducting various transactions.
Rationale for restrictions:	NA ☐ to prevent non-residents from acquiring a substantial interest in a U.K. country whose operations are regarded as being of utmost importance to the U.K.
Disclosure requirements:	Yes ☐ No XX
Nature of reporting requirements:	NA XX
Reported information availability:	1) kept confidential ☐ 3) partially disclosed ☐ N/A 2) completely disclosed ☐
Steps taken to ascertain true name of investor(s):	None XX Yes:
Foreign investments reviewed, if so, by whom:	NA ☐ By: Bank of England must approve. Yes XXX
Penalties for resident sellers:	Yes XX No ☐
Penalties for non-resident buyers:	Yes XXX No ☐
Types of penalties (criminal and/or civil)	NA ☐ Fine and/or imprisonment.
Past practices:	1) more restrictive ☐ 2) less restrictive ☐ 3) basically the same XX 4) NA ☐
Current status of the law (i.e., new legislation pending, changes in the near future unlikely, etc.)	NA XXX

RESTRICTIONS ON, AND DISCLOSURE OF, INVESTMENT OF FOREIGN CAPITAL IN VARIOUS COUNTRIES

SUMMARY SHEET

NA - Not applicable

COUNTRY: IRAN

Restrictions:	Yes [X] No [ ]
Types of restrictions:	NA [ ] 1) Investment must be in a field open to local investors; 2) Cannot involve monopoly rights; 3) Capital must be privately owned: No government participation; 4) applies only to countries with reciprocal facilities for Iranian investors.
Rationale for restrictions:	NA [X]
Disclosure requirements:	Yes [X] No [ ]
Nature of reporting requirements:	NA [ ] Full information is required in the proposal for licence
Reported information availability:	1) kept confidential [ ] 3) partially disclosed [ ] 2) completely disclosed [ ] Law does not specify
Steps taken to ascertain true name of investor(s):	None [ ] Yes: Must be included in proposal for licence
Foreign investments reviewed, if so, by whom:	NA [ ] By: Foreign Investment Supervisory Board of the Ministry of Economy. Yes [X]
Penalties for resident sellers:	Yes [X] No [ ] (Foreign and Domestic, resident and
Penalties for non-resident buyers:	Yes [X] No [ ] (non resident, are all treated (equally under provisions of the law
Types of penalties (criminal and/or civil)	NA [ ] Penalties are same as those imposed on any violation by any domestic investor
Past practices:	1) more restrictive [ ] 2) less restrictive [ ] 3) basically the same [X] 4) NA [ ]
Current status of the law (i.e., new legislation pending, changes in the near future unlikely, etc.)	NA [X]

RESTRICTIONS ON AND DISCLOSURE OF INVESTMENT OF FOREIGN CAPITAL IN VARIOUS COUNTRIES

SUMMARY SHEET

NA - Not applicable

COUNTRY VENEZUELA

Restrictions:	Yes [x] No [ ]
Types of restrictions:	NA [ ] Must Register and apply for authorization. Management by Venezuelans Majority of Venezuelan employees Certain activities under strict control (steel, oil, etc
Rationale for restrictions:	NA [ ] Compliance with the terms of Cartagena Accord (Andean Pact) of May 26, 1973. Unification of national economic policies.
Disclosure requirements:	Yes [x] No [ ] At time of registration and as requested by agency.
Nature of reporting requirements:	NA [ ] Compulsory. Registration and Reporting preceeds authorization to invest.
Reported information availability:	1) kept confidential [ ] 2) completely disclosed [ ] 3) partially disclosed [ ] 4) Not specified
Steps taken to ascertain true name of investor(s):	None [ ] No shares to the bearers are allowed. Yes: [x] The Superintendencia de Inversiones Extranjeras is empowered to investigate.
Foreign investments reviewed, if so, by whom:	NA [ ] Yes [x] By: Superintendencia de Inversiones Extranjeras (Superintendency of Foreign Investment) Agency operating within the framework of the Ministry of Development.
Penalties for resident sellers:	Yes [x] No [ ] Sales or any other form of transfer may be void.
Penalties for non-resident buyers:	Yes [x] No [ ] Without authorization, investment may be suspended, cancelled, void, fined, etc.
Types of penalties (criminal and/or civil)	NA [ ] civil.
Past practices:	1) more restrictive [ ] 2) less restrictive [x] 3) basically the same [ ] 4) NA [ ]
Current status of the law (i.e., new legislation pending, changes in the near future unlikely, etc.)	NA [ ] Recent enactment: Decree No. 63 of April 29, 1974 G.O. 4/29/74 Extraordinary.

RESTRICTIONS ON, AND DISCLOSURE OF, INVESTMENT OF FOREIGN CAPITAL IN VARIOUS COUNTRIES

1

Country	Prior approval: Yes	Prior approval: No	Types of restrictions	Rationale for restrictions	Disclosure requirements: Yes	Disclosure requirements: No	Nature of reporting requirements	Reported information available: 1) kept confidential	2) completely disclosed	3) partially disclosed	Steps to ascertain true nature of investor	Foreign investments reviewed, by whom	Resident seller penalties: Yes	Resident seller penalties: No	Non-resident buyer penalties: Yes	Non-resident buyer penalties: No	Types of penalties (criminal &/or civil)	Past practices: 1) more restrictive 2) less restrictive 3) basically the same	Current status of law (i.e., new law pending, changes in near future unlikely, etc.)
								1)	2)	3)								1) 2) 3)	
Australia	X		All shareholders of 10% or more of co. shares must give notice and have pertinent information placed on a public register. All persons or corporations desiring to obtain 15% or more of a co.'s voting shares must receive approval of the Minister or Commissioner and supply further information.	National interest and strengthening of Australian industrial ownership.	X		"Substantial shareholders" must give notice and information to companies. Takeover offers require disclosure statements.		X		Names of other interest holdings plus any outside agreements must be disclosed in takeover offers.	Commonwealth: Minister & Independent Authority States Commissioner	X		X		Fines and imprisonment	X	The laws are very recent. There will probably be forthcoming procedural regulations. It is too soon to see the direct results of these new restrictions.
Austria	X		License from National Bank	On a case to case basis	X		Type of transaction, origin, amount and payment information	X			Application requires full disclosure	Ministry of Finance and National Bank	X		X		Fines and imprisonment. No differentiation made between residents and nonresidents	X	

RESTRICTIONS ON, AND DISCLOSURE OF, INVESTMENT OF FOREIGN CAPITAL IN VARIOUS COUNTRIES 2

RESTRICTIONS ON, AND DISCLOSURE OF, INVESTMENT OF FOREIGN CAPITAL IN VARIOUS COUNTRIES

Country	Restrictions Yes	Restrictions No	Types of restrictions	Rationale for restrictions	Disclosure requirements Yes	Disclosure requirements No	Nature of reporting requirements	Reported info. or liability: 1) kept confidential 2) completely disclosed 3) partially disclosed — 1)	2)	3)	Steps to ascertain true owner	Foreign investments reviewed, by whom	Resident seller penalties Yes	Resident seller penalties No	Non-resident buyer penalties Yes	Non-resident buyer penalties No	Types of penalties (criminal &/or civil)	Past practices: 1) more restrictive 2) less restrictive 3) basically the same — 1)	2)	3)	Current status of law (i.e., new law pending, changes in near future unlikely, etc.)
Belgium	X		License and government control: government permission required by foreigners who desire to buy stock in a Belgian corporation quoted on the exchange market.	To protect the country's interests		X	N/A	—	—	-	None	N/A	X		—	—	Criminal; fines, imprisonment, and possible confiscation of goods		X		—
Bermuda	X		Banks & corporations must be locally incorporated & licensed with 60 percent of the voting shares owned by Bermudians	Local control	X		Applicants for purchase of shares or parties to the transfer of shares must specify if they are Bermudian. Changes in citizenship must also be reported. This information goes to the directors of the corporation.		N/A		Annual reports filed with the Member list the number of shares beneficially owned by Bermudians. In addition, burden is on the corporation to make a prima facie showing that it is owned by the proper percentage of Bermudians.	Member of the Executive Council	X Fines		X Divestiture or forfeiture to Crown.		Divestiture to 40 percent level or forfeiture of shares to the Crown. Fines for knowingly giving false information and for corporate officers who allow over 40 percent foreign control.		N/A		N/A

RESTRICTIONS ON, AND DISCLOSURE OF, INVESTMENT OF FOREIGN CAPITAL IN VARIOUS COUNTRIES

Country	Restrictions Yes	No	Types of restrictions	Rationale for restrictions	Disclosure requirements Yes	No	Nature of reporting requirements	Reported information availability: 1) kept confidential 2) completely disclosed 3) partially disclosed 1)	2)	3)	Steps to ascertain true nature of investors	Foreign investments reviewed, by whom	Resident seller penalties Yes	No	Non-resident buyer penalties Yes	No	Types of penalties (criminal &/or civil)	Past practices: 1) more restrictive 2) less restrictive 3) basically the same 1)	2)	3)	Current status of law (i.e., new law pending, changes in near future unlikely, etc.)
Canada	X		Investment must be determined to be of significant benefit to Canada in instances of foreign investments in companies with gross assets of $250,000 and gross revenues of $3,000,000 or more.	High level of foreign control of Canadian industry affects the ability of Canadians to maintain effective control of their economic environment.	X		Schedules in notice to Foreign Review Agency. Schedules A and B to Dominion Bureau of Statistics.			X	Notice to Foreign Investment Review Agency to disclose the person who "ultimately controls in fact the applicant or that member, including any person who is trustee, nominee, or agent."	Foreign Investment Review Agency and Minister		X	X		Criminal fine and/or imprisonment or both.		X		Waiting for the promulgation of Part II, Sec.6 of the Foreign Investment Review Act regulating investment in new businesses, probably in six months or as soon as experience is gained from the operation of Part I.
France	X		Preliminary declarations, control by the Minister of Finance	Defense of national interest	X		Preliminary declaration	X			Filing of declaration	Minister of Finance	X		X		No differentiation made between residents and nonresidents		X		----

RESTRICTIONS ON, AND DISCLOSURE OF, INVESTMENT OF FOREIGN CAPITAL IN VARIOUS COUNTRIES

Country	Restrictions Yes	Restrictions No	Types of restrictions	Rationale for restrictions	Disclosure requirements Yes	Disclosure requirements No	Future of reporting requirements	Reported information availability: 1) kept confidential 2) completely disclosed 3) partially disclosed 1)	2)	3)	Steps to ascertain true name of investor	Foreign investments reviewed, by whom	Resident seller penalties Yes	Resident seller penalties No	Non-resident buyer penalties Yes	Non-resident buyer penalties No	Types of penalties (criminal &/or civil)	Past practices: 1) more restrictive 2) less restrictive 3) basically the same 1)	2)	3)	Current status of law (i.e., new law pending, changes in near future unlikely, etc.)
Germany, Federal Republic of	X		1) licensing; 2) prohibition; 3) mandatory cash deposits	1) fulfillment of international agreement; 2) protection of economy against damaging influence; 3) interest of national security or foreign policy	X		Report	X			None	Deutsche Bundesbank	X		X		Criminal			X	NA
Italy		X	NA	NA	X		Through the Office of Exchange or through the Treasury	X			None	Office of Exchange, the Treasury, or Ministry of Foreign Affairs	X		X		Criminal and civil. No differentiation made between residents and non-residents			X	—
Japan	X		Prior government validation and percentage restrictions	Protecting industries not yet strong enough to complete internationally as well as precluding the the possibility of foreign participation in or domination of basic and important industries	X Disclosure requirements are part of application forms for validation of acquisition of stock. If validated, there is a separate reporting requirement		—	X			Agent must use a different application form in which he must state the true name of the investor; proof of the power of attorney must be attached to the application	The Foreign Investment Council, the Ministry of Finance, and other competent Ministries.	X		X		Criminal. Fine and Imprisonment. No differentiation between residents and non-residents		X		Changes in the near future unlikely

INSTRUCTIONS ON, AND DISCLOSURE OF, INVESTMENT OF FOREIGN CAPITAL IN VARIOUS COUNTRIES

Country	Restrictive-ness: Yes	Restrictive-ness: No	Types of restrictions	Rationale for restrictions	Disclosure requirements: Yes	Disclosure requirements: No	Nature of reporting requirements	Reported information availability: 1) Kept confidential 2) completely disclosed 3) partially disclosed — 1)	2)	3)	Steps to ascertain true nose of investors	Foreign investments reviewed, by whom	Resident seller penalties: Yes	Resident seller penalties: No	Non-resident buyer penalties: Yes	Non-resident buyer penalties: No	Types of penalties (criminal &/or civil)	Past practices: 1) more restrictive 2) less restrictive 3) basically the same — 1)	2)	3)	Current status of law (i.e., new law pending, changes in near future unlikely, etc.
The Netherlands	X		Licenses	Capital market policy; as far as borrowing is concerned, either to control the contracting of a foreign debt by local authorities or for reasons of monetary and reserve policies	X		Reporting of transactions of F1000,- or more		NA		NA	Netherlands Bank	X		X		Imprisonment, fines, and additional punishments. No differentiation made between residents and nonresidents		NA		New legislation has been pending for a long time.
Sweden	X		Restrictions on foreign ownership on real estate, mines, and corporations owning real estate. Permit from state is required.	National interest	X		Affidavit to the Riksbank		X		Law re: applications prohibits use of straw men.	Applications for permits under the Currency Exchange Control Statute are made to the Riksbank or a bank authorized to act on its behalf.	X		X		Criminal and civil.		X		NA
United Kingdom	X		Asking permission before conducting vetious transactions.	To prevent non-residents from acquiring a substantial interest in a U.K. country whose operations are regarded as being of utmost importance to the U.K.		X	NA		NA		None	Bank of England must approve.	X		X		Fine and/or imprisonment		X		NA

INSTRUCTIONS ON, AND DISCLOSURE OF, INVESTMENT OF FOREIGN CAPITAL IN VARIOUS COUNTRIES

Even under the new policy, a foreign investor desirous of acquiring more than 10 percent (more than 25 percent in the case of a group of foreign investors) of the issued and outstanding shares of an existing firm for the purpose of participating in its management must first obtain the approval of the firm's board of directors and a decision by the competent Minister that the proposed acquisition would not harm the Japanese economy.

There are also 19 so-called "restricted" lines of business in which foreigners as a group are still limited to less than 15 percent of the stock. The restricted industries are the following: water supply, electric power, gas utilities, railways, tramways, road transportation, freight express, marine transportation, harbor transportation, air transportation, banking, mutual loan and savings banking, long-term credit banking, foreign exchange banking, trust, broadcasting, fisheries, and mining (in addition, the Bank of Japan is classified as a restricted industry corporation).

Validation Procedure in Practice

In evaluating the application forms for validation of stock and related documents which contain disclosure requirements, the government officials in charge have virtually unreviewable power to control inward capital investment. Such applications are judged by economic and political considerations rather than by standards and rules laid down in statutes or court decisions. In addition, government officials have the power to prescribe conditions upon which a validation will be based, and failure to comply with such conditions can be grounds for revocation of the validation.

The length of time required for approval varies, but one- or two-year waiting periods are not unusual. The number of ministries that are interested in the proposal obviously is a major factor influencing the length of time required for approval. It is also customary for the Ministry of International Trade and Industry to consult with the firms that would be competing with the new company. These discussions are also very time-consuming.

We have not located information on how the disclosure system has operated in practice.

Penalties

Failure to comply with the provisions of the Foreign Investment Law carries penal sanctions (the maximum prescribed in Articles 26 to 28 being penal servitude not exceeding three years, and the minimum, a fine not exceeding 50,000 yen).

With respect to the punishment of an agent (either a corporation or a natural person) of the principal making the foreign investment, Article 29 of the Law provides that when a representative of a juridical person (including both domestic and foreign corporations) or an agent, employee or other worker hired by a juridical person or a natural person (including Japanese nationals, resident aliens, and non-resident aliens) has committed acts in violation of the provisions of this Law in connection with the business or property of said juridical person or natural person, such juridical or natural person (the principal) shall be liable to a fine specified in the Law, in addition to the agent himself being punished. However, when it is proved that the principal exercised due care and supervision over the said business or property in order to prevent the aforesaid violations committed by the agent, the principal will be exempted from punishment.

Article 29 further provides that in cases where a juridical person as defined in this Law is to be tried, its representative or custodian shall represent it in the court action, and the provisions of the laws concerning criminal prosecution applicable to an accused or suspect juridical person shall apply mutatis mutandis.

Liberalization policies in the past

The basic provisions of the Foreign Investment Law of 1950 remain virtually unchanged, but with Japan's increased economic strength and in conformity with the world trend towards liberalizing international capital movements, the application of statutory provisions and policies restricting foreign investment has been progressively relaxed or dropped. Particularly in the period from 1963 to April 1964, in accordance with Japan's assumption of Article VIII status under the IMF Agreement, a series of measures easing the criteria to be fulfilled for validation and revising and simplifying application procedures were taken.

Since 1967 Japan has further accelerated the tempo of liberalization of capital transactions in the five phases of the so-called capital liberalization policy, the last one of which was completed in May 1973. Under these policies, there has been

a progressive expansion of the scope of industries in which there will be automatic approval of applications for the acquisition of stock by foreign investors for the purpose of participation in the management of a corporation. Also there has been an extension of the range of instances in which there will be automatic validation of applications for the acquisition of stocks by investors through the stock market.

Even after the completion of the fifth phase of capital liberalization, however, the Japanese still place restrictions on foreign investment. The rationale for these restrictions is that they support and protect industries not yet strong enough to compete internationally, as well as precluding foreign participation in or domination of basic and important industries.

In the Japanese view, the foreign investor now has a much wider range of free choice with respect to the form and extent of investment than he had in 1967. To some extent, foreign investment in Japanese industry has been liberalized, but not to an extent that foreign investors are likely to regard as acceptable.

We have no information at hand on how the 1973 policy has worked in practice.

THE NETHERLANDS

Question (a):

The foreign exchange control is administered by the Netherlands Bank (Nederlandsche Bank) on behalf of the Ministers of Finance, Economic Affairs, Foreign Affairs, and Agriculture, as provided in Article 1 of the Exchange Decree of October 10, 1945, *Staatsblad* F222, as amended.

Question (b):

Each transaction of over f1000, whether freely permitted or not, between a resident and a nonresident must be reported to the Netherlands Bank by the resident through the bank that handled the transaction.[1] However, this is for statistical purposes only.[2]

Question (c):

The Netherlands Bank administers the foreign exchange control through general or specific licenses, provided the payments are made through a bank authorized by the Netherlands Bank.[3]

A nonresident must secure an investment permit from the Netherlands Bank before acquiring any ownership in an existing business or beginning a new business.

Question (e):

The rationale for the restrictive policies is: capital market policy, and as far as borrowing is concerned, either to control the contracting of a foreign debt by local authorities or for reasons of monetary and reserve policies.[4]

Question (f):

Article 32 of the Exchange Decree states that failure to comply with the permits granted is forbidden, and on the basis thereof, the Law of June 22, 1950, *Staatsblad* K258, as amended, on Economic Delicts states in Article 1 that violations of the Exchange Decree are economic delicts and therefore are punishable by imprisonment and fines.

Furthermore, Article 31 of the Decree states that the Dutch Criminal Code also is applicable to violations of the provisions in this Decree committed abroad.

No distinction is made between residents, citizens, or foreigners. Therefore, foreigners are punished in the same way, although it is difficult, if not impossible to apply the penalty effectively. However, Article 33 of the Criminal Code does state that the punishment of forfeiture may be added to a main punishment, and thus the property in the Netherlands of foreigners who are in violation of the law may be confiscated.

SWEDEN

The practices with respect to the regulation of foreign investments are in most countries subject to continuous changes even though the underlying statutory laws may remain relatively unchanged as has been the case in Sweden.

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[1] International Monetary Fund (hereafter IMF), *Twenty-fifth Annual Report on Exchange Restrictions* 314 (1974) and First National City Bank, Foreign Information Service, *Annual Summary of Exchange and Foreign Trade Regulations as of January 1, 1974.*

[2] Arthur Andersen and Co., *Tax and Trade Guide, the Netherlands* 9 (August, 1972).

[3] *Common Market Reporter, Doing Business in Europe. the Netherlands* (1974).

[4] *Supra* note 1, at IMF.

The 1973 report on foreign investments in the Scandinavian countries attached as *Appendix I* is still of value from a legal point of view, but the report must nevertheless be described as dated because of substantial changes with respect to each of the countries therein. Denmark has seen a number of changes because of its membership in the European Common Market, and substantial changes have occurred in Norway due to the exploitation of oil and gas in the Norwegian sector of the North Sea.

The unavoidable time lag between the publication of needed research materials and their acquisition by large research libraries, such as the Library of Congress, makes it very difficult to answer questions on the very latest current developments. As far as this writer can ascertain, the article on Sweden in the 1974 report from the International Monetary Fund is the latest, broad discussion of Swedish practices with respect to foreign investments, and because it seems to have been written by an expert on the topic, this article is contained in *Appendix II*.[1] The specific discussion of foreign investments is found under the heading of "Capital," and the many changes during 1973 are reviewed toward the end of the article. This survey begins with the agreement with the European Economic Community which this writer in *Appendix I* described as a very important event. However, the anonymous author of the article in *Appendix II* is probably right when he implies in his footnote 1 (p. 404) that the most important event during 1973–74 was actually the resumption of full commercial relations with East Germany and the other East Bloc countries, which took place after the completion of *Appendix I*.

The remainder of this report aims at answering the specific questions in the inquiry to the extent that this is possible within the given deadline.

Question (a): Restrictions on Foreign Investments

Sweden has a number of statutory provisions which are directly aimed at regulating foreign investments and foreign business enterprises. The most important is the Statute of May 30, 1916, on Limitations of the Rights of Foreigners to Invest in Swedish Real Estate, Mines, and Shares of Corporations Owning Real Estate.[2] The Statute prohibits such transactions unless the foreign citizen or entity has been granted a specific concession from the Swedish State. Such concessions are, as described in the appendices, granted very liberally at the present time. This Statute in Section 2 has an important provision which defines a corporation as a foreign corporation if more than one-fifth of its voting stocks are owned or controlled by foreign interests, or if more than two-fifths of its capital is owned or controlled by foreign interests. Swedish corporations under the Statute are under obligation to have provisions in their bylaws restricting foreign ownership. The governing authority of such corporations shall, be according to Section 15 of the Statute, held criminally liable for up to 1 year of imprisonment for nonobservance of the duty to enter the prohibition of foreign ownership on the stock certificates and to reveal their possible knowledge of foreign ownership or control. These requirements on disclosure, etc., were somewhat strengthened on May 24, 1973, as described on p. 407 of *Appendix II*.

Another important statute is the Statute of June 22, 1939, on Currency Exchange Control.[3] This Statute prohibits all transactions in foreign currencies, securities, notes, and the like, unless the transaction has been permitted by the Swedish national bank, the Riksbank. How the system of currency control works in practice is discussed in detail in *Appendix II*. This Statute itself is discussed under the following Question (b) because it is not directly aimed at regulating foreign investments. However, it must be stressed here that it is practically impossible to make such investments lawfully without obtaining a permit from the Riksbank.

Question (b): Reporting and Disclosure Requirements

Applications for permits under the Currency Exchange Control Statute are made in the form of an affidavit to the Riksbank or to any larger bank which may have been authorized to act on behalf of the Riksbank. The knowledge which these institutions have of developments within Swedish commerce would most likely enable them to spot possibly incomplete information on the real identity of a foreign investor. Furthermore, false, misleading, or incomplete informa-

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[1] International Monetary Fund, *Twenty-fifth annual report on exchange restrictions* (1974).
[2] *Sveriges Rikes Lag*. 95th ed., p. 259265.
[3] *Id.*, at B355–B360.

tion in the affidavit is according to Section 9 of the Statute punishable by imprisonment up to 2 years. The criminal liabilities are spelled out in more detail in Section 15 of a statutory ordinance of June 5, 1959, (Svensk författnings samling 1959:264). This provision expressly mentions, among other criminal delicts, the use of a straw man and the circumvention of valid prohibitions.

Information contained in applications under the Currency Exchange Control Statute are not subject to requirements on direct disclosures. However, it follows from the Swedish concept of freedom of information that such applications are part of the public record and are open to inspection by the general public. To keep them secret would require a specific enactment, and such a statutory provision has not been located. The limited requirement of disclosure of foreign interests in corporations owning real estate or mines was described under Question (a) above.

Question (c): Review of Decisions Relating to Foreign Investments

(1) Decisions under the Currency Exchange Control Statute are, as indicated on p. 404 of *Appendix II*, normally made by the Exchange Control Board, and such decisions may be appealed to the Board of Directors of the Riksbank. The decisions by the Directors are, according to Section 6a of the Statute, final.

Appendix II as a whole describes very well how Sweden is implementing its monetary policies, but the Statute on Currency Exchange Control is rather vague with respect to its purpose. In Section 1, Subsection 3, it does have words indicating that the main purpose is to reach the goals which have been established for the monetary policies of the Riksbank or otherwise by the monetary relations between Sweden and other countries.

(2) The Statute on Limitations on the Rights of Foreigners to Invest in Swedish Real Estates, Mines or Shares of Corporations Owning Real Estate lists a number of uncomplicated situations in Section 1 in which concessions may be granted by the local prefecture, and such decisions are in accordance to Section 17a subject to appeal to the Supreme Administrative Court. However, substantial foreign investments would normally involve more complex situations in which a Royal concession is required, and such decisions in the name of the King cannot be appealed as a right.

Section 1, Subsection 3, states with respect to the simple concessions granted by the prefectures that foreigners normally should be granted concessions to acquire real estate unless this is found to be contrary to the public interest or unless the personal circumstances of the applicant makes such a grant less desirable. Although this statement does not apply directly to concessions granted by the King, it does seem to be a fairly good description of how the Statute as a whole is administered.

Question (d) and (1): An Account of How the Restrictions and the Disclosure System has Worked

An evaluation has not been attempted. As far as this writer can ascertain, the Swedish restrictions on foreign investments and the partial disclosure system discussed above have worked as intended by the Swedish Parliament and by the proper government authorities. The basic enactments discussed above are from 1916 and 1939, respectively. They would undoubtedly have been amended very substantially if they had not been found to be up to the Swedish expectations.

It is a completely different question whether or not such legislation would be workable in the United States, a question this writer would be inclined to answer in the negative. At least two preliminary questions have to be answered in order to evaluate this problem. The first is to what extent the very broad Swedish concept of freedom of information could be accepted here, since Swedish law is based more on the control offered by freedom of information than on the control of so-called disclosures. The second, and the more important, is to what extent the Swedish concept of very broad powers for the public to regulate the use of real estate would be acceptable here. Two scholarly articles should be mentioned in this context, namely: Hilding Eek, "Protection of News Sources in the Constitution," 5 *Scandinavian Studies in Law* 9–25 (1961) and Bent Christensen, "Public Regulation of Private Real Property," 13 *Scandinavian Studies in Law* 73–106 (1969).

Question (e): Rationale for the Restrictions

It is easy to explain why the two statutes discussed above originally were enacted. The 1916 Statute was enacted during World War I in response to a great

fear that strong European capital interests would buy up all of Sweden's natural resources, such as mines, forests, hydroelectric power, and so on. The 1939 enactment was a typical product of the Great Depression before World War II. Many changes have taken place since then, and it is clear that the reasons for the original enactments cannot be accepted as a rationale of the current legislation.

As for the current rationale, this writer will venture the guess that the statute discussed were never repealed because they were found to be useful to promote the national interests of Sweden in spite of all changes.

Question (f): Penalties

The criminal penalties for Swedish residents have already been discussed above. Such penalties would typically apply to more serious failures to comply with the Swedish laws and regulations. Less serious violations would probably be reacted to in the form of a warning or in the form of a denial or revocation of permits or concessions.

The foreign investor should especially be aware of the strict provisions on forfeiture. For instance, Section 9 of the Statute on Control of Currency Exchange provides:

Sec. 9. For violation of regulations which are issued in accordance with this statute there may be prescribed the punishment of imprisonment of up to 2 years. Authorization is further given to prescribe forfeiture to the Swedish State [Treasury] of money, indebtures, or securities which have been used in the criminal transactions or as payment for these. Forfeiture may also be determined as an amount of corresponding worth.

UNITED KINGDOM

The general policy in the United Kingdom is to welcome investments from non-residents provided that they are properly financed. Problems could, however, arise if a non-resident wanted to acquire a substantial interest in a United Kingdom company whose operations were considered by the government to be of the utmost concern and importance to the United Kingdom. The act that controls investment in the United Kingdom is the Exchange Control Act 1947, 10 & 11 Geo. 6, c. 14.[1] Permission is required before certain transactions can take place. The act is operated by the Bank of England under the supervision of the Treasury.[2]

For the purposes of exchange control the countries of the world are divided into two groups, the Scheduled Territories and the rest of the world. The Scheduled Territories at present comprise the United Kingdom, including the Channel Islands and the Isle of Man, the Republic of Ireland and Gibraltar.

With regard to direct investment, exchange control consent is required for the issue or transfer of shares from a United Kingdom company to a non-resident. Permission is also needed for any act that would result in the control, direct or indirect, of a United Kingdom company passing directly or indirectly from United Kingdom residents to persons resident in another country. The required permission is usually given provided that adequate capital for the project is supplied either in an approved manner of payment or by the import of goods or services, and provided that the subscription or consideration monies are paid either in sterling from an external account or in foreign currency.

Foreign firms and individuals must obtain permission from the Treasury in order to raise capital in the United Kingdom and United Kingdom resident subsidiaries of foreign companies are required to obtain consent before issuing shares or other securities to non-residents. Overdraft borrowing by foreign-controlled firms, even for working capital, must have the approval of the exchange control authorities.

In the case of investment in existing companies, evidence should be provided that a fair price is being paid for the assets and that any requirement of the City Panel on Take Overs and Mergers has been met. Where a share purchase would give the investor 10 percent or more of the equity of a United Kingdom company the specific permission of the Bank of England is required.

In relation to portfolio investment, the object of the control of securities is, among other reasons, to prevent the unauthorized transfer of United Kingdom assets to non-residents. It is usually made a condition of all consents and permissions that are given for transactions in securities that an "Authorised

[1] For regulations made under this Act see attached schedule.
[2] Exchange Control Act, 1947, 10 and 11 Geo. 6, c 14 § 34(2).

Depositary"[3] accepts the responsibility of supervising the transaction to ensure that it conforms to the terms of the permission. All issues of securities in the United Kingdom require permission unless it is established that neither the persons to whom the security is to be issued nor the person for whom he is to be a nominee, is a non-resident and a declaration to this effect is received by the person issuing the security. In addition, permission is required for the issue of sterling bearer securities and for any act which would result in a body corporate controlled by United Kingdom residents ceasing to be so controlled.

The Exchange Control Act contains various provisions on enforcement[4] and it empowers the Treasury to demand evidence and information which it considers necessary in order to secure compliance with, or to detect evasion of the act. It is an offense which is punishable by imprisonment or fine or both, to fail to comply with such a request.

In this report no attempt has been made to describe the position of investment in the United Kingdom by the member countries of the Common Market now that the United Kingdom has become a member of the European Economic Community.

SCHEDULE OF REGULATIONS

The Exchange Control Act, 1947, 10 & 11 Geo. 6, c. 14

Regulations

The Exchange Control (Gold Coins Exemption) Order, Stat. Instr. 1971, No. 516.
The Exchange Control (Import and Export) Order, Stat. Instr. 1966, No. 1351, as amended by Stat. Instr. 1969, No. 1883.
The Exchange Control (Payments) Order, Stat. Instr. 1967, No. 1189, as amended by Stat. Instr. 1971, No. 1632.
The Exchange Control (Purchase of Foreign Currency) Order, Stat. Instr. 1972, No. 137, as amended by Stat. Instr. 1973, No. 1997.
The Exchange Control (Specified Currency and Prescribed Securities) Order, Stat. Instr. 1967, No. 556 as amended by Stat. Instr. 1968, No. 1234.
The Exchange Control (Prescribed Secondary Securities) Order, Stat. Instr. 1968, No. 1284.
The Exchange Control (Declarations and Evidence) Order, Stat. Instr. 1968, No. 1232.
The Exchange Control (Deposit of Securities) (Exemption) Order, Stat. Instr. 1970, No. 2038.
The Exchange Control (Authorised Dealers and Depositaries) Order, Stat. Instr. 1974, No. 588.
The Exchange Control (Scheduled Territories) Order, Stat. Instr. 1972, No. 980, as amended by Stat. Instr. 1972, No. 2040.

[3] *Id.* at §§ 34(2), 42.
[4] *Id.* at § 34, sched. 5.